INDEX

	Page
Opinions below	1
Jurisdiction	1
Statute involved	2
Question presented	3
Statement	3
The question is substantial	6
Conclusion	11
Appendix A	1a–5a
Appendix B	6a–7a
Appendix C	8a–217a
Appendix D	218a–228a
Appendix E	229a–230a
Appendix F	231a–233a
Appendix G	234a–249a

CITATIONS

Cases:

American Trucking Associations, Inc. v. *Atchison, Topeka and Santa Fe Ry. Co.*, 387 U.S. 397	2
American Trucking Associations, Inc. v. *United States*, 364 U.S. 1	2
Atlanta-New Orleans Motor Freight Co. v. *United States*, 197 F. Supp. 364	8, 10
Burlington Truck Lines, Inc. v. *United States*, 371 U.S. 156	7
Chesapeake & Ohio Ry. Co. v. *United States*, 283 U.S. 35	9
Davidson Transfer & Storage Co. v. *United States*, 42 F. Supp. 215, affirmed *per curiam*, 317 U.S. 587	10
Inland Motor Freight v. *United States*, 36 F. Supp. 885	11
Interstate Commerce Commission v. *Parker*, 326 U.S. 60	8
Norfolk Southern Bus Corp. v. *United States*, 96 F. Supp. 756	10

277-878—67——1

Cases—Continued

	Page
North Coast Transp. Co. v. *United States*, 54 F. Supp. 448, affirmed *per curiam*, 323 U.S. 668	10
Schaffer Transp. Co. v. *United States*, 355 U.S. 83	8
United States v. *Detroit & Cleveland Navigation Co.*, 326 U.S. 236	10
United States v. *Drum*, 368 U.S. 370	8
Statutes:	
All Writs Statute, 28 U.S.C. 1651	6
Motor Carrier Act, Sec. 205(a), 49 U.S.C. 305(a)	4
Motor Carrier Act, Sec. 207(a), 49 U.S.C. 307(a)	2
National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § 1	7
28 U.S.C. 1253 and 2101(b)	2
28 U.S.C. 1336, 1398, 2284, and 2321–2325	1
Miscellaneous:	
H. Report No. 1645, 74th Cong., 1st Sess.	7
S. Report No. 482, 74th Cong., 1st Sess.	7

In the Supreme Court of the United States

OCTOBER TERM, 1967

No.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court (App. A, *infra*, pp. 1a–5a) is reported at 268 F. Supp. 239. An earlier opinion of the district court (App. D, *infra*, pp. 218a–228a) is reported at 242 F. Supp. 1016. The report of the Interstate Commerce Commission on remand (App. C, *infra*, pp. 8a–217a) is printed at 100 M.C.C. 482. The Commission's first report (App. G, *infra*, pp. 234a–249a) is printed at 95 M.C.C. 457.

JURISDICTION

This action was originally brought under 28 U.S.C. 1336, 1398, 2284, and 2321–2325 to set aside an order

of the Interstate Commerce Commission. The final judgment of the three-judge district court (App. B, *infra*, pp. 6a–7a) was entered on May 13, 1967. The United States and the Interstate Commerce Commission filed a notice of appeal on July 14, 1967, and the time for docketing the appeal was subsequently extended by District Judge Cox until October 8, 1967.

The jurisdiction of this Court to review the judgment of the district court on direct appeal is conferred by 28 U.S.C. 1253 and 2101(b). *American Trucking Associations, Inc.* v. *Atchison, Topeka and Sante Fe Ry. Co.*, 387 U.S. 397; *American Trucking Associations, Inc.* v. *United States*, 364 U.S. 1.

STATUTE INVOLVED

Section 207(a) of the Motor Carrier Act, 49 U.S.C. 307(a), provides:

> Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and be-

tween fixed termini, except as such carriers may be authorized to engage in special or charter operations.

QUESTION PRESENTED

The Interstate Commerce Commission found that existing general commodities service to specified points in the South and Southwest was poor and that the public convenience and necessity required the issuance of a motor common carrier certificate to an additional carrier. The district court set aside the Commission's order, holding as a "rule of property" that no new motor carrier service may be authorized until existing carriers have been given an opportunity to improve or correct their service. The question presented is whether certificated motor carriers whose service proves deficient and inadequate to meet public needs are entitled to immunity from new competition until they are afforded an additional opportunity to remedy the deficiencies found.

STATEMENT

On April 28, 1960, Braswell Motor Freight Lines, Inc., a regular route general commodity motor carrier operating between Los Angeles, California, and Memphis, Tennessee, and between Jackson, Mississippi, and New Orleans, Louisiana, filed an application seeking to extend its operating authority east of Jackson, Mississippi, to points in Alabama, Georgia, and Mississippi.[1] More than 30 competing rail and motor carriers

[1] The points included in the application are set out in Appendix A of the Commission's last report (App. C, *infra*, pp. 45a–47a).

and freight forwarders opposed the application. At hearings before a joint board [2] extending over a 14 week period, more than 300 shippers and receivers of freight supported the application.

In its recommended report and order, the joint board concluded that the application should be denied. The Commission (Division 1) disagreed, found that the record demonstrated a public need for much of Braswell's proposed service, and accordingly granted the major part of the application. Following denial of petitions for reconsideration, several competing motor carriers commenced this action to set aside the Commission's order in the district court.

In its first decision (App. D, *infra*, pp. 218a–228a), the district court permanently enjoined the Commission from granting Braswell the approved authority, on the ground that the Commission had failed to make adequate findings to support its decision. The court reasoned that since the Commission had substantially adopted the joint board's findings but had rejected its recommendation that the application be denied, "the board was obliged to state with more than ordinary specificity any contrary finding of facts available to it in this record to influence its decision" (App. D, *infra*, p. 222a). Accordingly, the court remanded the case to the Commission for further proceedings consistent with its opinion (*id.* at 228a).

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[2] Under Section 205(a) of the Motor Carrier Act, 49 U.S.C. 305(a), an application to serve no more than three States must be referred to a "joint board," composed of representatives of the States involved.

On remand, the Commission re-examined the voluminous record in a detailed report (App. C, *infra*, pp. 8a–217a) and again concluded that there was a public need for the service proposed by the applicant. It noted "numerous instances of deficiencies in the existing transportation services experienced by a majority of the supporting witnesses" (*id.* at 18a), including excessive and inconsistent transit times (*id.* at 20a–24a), excessive delays in pickups and deliveries (*id.* at 25a), and excessive handling of perishable or fragile freight in interline service with attendant loss and damage (*id.* at 25a–27a). As a result of such inadequacies, the Commission found that a "significant number of the supporting shippers and receivers have been materially hampered in conducting their respective businesses" (*id.* at 27a), and that this has, "in turn, made it difficult for them to effectively compete in markets they presently serve as well as in markets they are seeking to develop" (*ibid.*).

The Commission found, contrary to the joint board, that shippers had made a serious effort to utilize the services of existing carriers. Numerous complaints about inadequacies in existing services had been registered with at least 30 of the carriers utilized by the shippers and receivers, but to no avail (*id.* at 36a). Existing carriers, the Commission found, "have not demonstrated that they can be depended upon to provide the type of service of which they claim to be capable" (*id.* at 36a), and their overall services "have not measured up to a quality of service that can be classified as reasonably adequate" (*id.* at 37a). The Commission concluded that "the clear and substantial

benefit to the affected shipping and receiving public that would result from making available the improved service here proposed warrants the grant of" Braswell's proposed application for a certificate of public convenience and necessity.

On appellees' motion to enforce the court's prior judgment under the All Writs Statute, 28 U.S.C. 1651, the district court again reversed the Commission. Although not disputing the Commission's findings as to the public need for additional motor carrier service and the deficiencies of existing service, the court below declared, as "a rule of property," that no new motor carrier "certificate affecting the area of another carrier will be issued until that other carrier has been furnished an opportunity either to improve or correct his service to such route or decide whether he wishes to or can furnish the added service" (App. A, *infra*, pp. 3a–4a): Hence, the district court permanently enjoined the Commission "from issuing any certificate of convenience and necessity to the applicant in this case, unless and until the protestants (plaintiffs) are first afforded a reasonable opportunity to furnish such service and either advise the Commission that they do not wish to do so or the Commission finds from experience, after a reasonable opportunity, that they are unable and cannot furnish such service to the public" (App. A, *infra*, p. 5a).

THE QUESTION IS SUBSTANTIAL

By prohibiting the Commission from authorizing new motor carrier service until existing carriers with

inadequate or deficient operations are given a "second chance," over an indefinite future period, to show whether they can provide the transportation service for which they were certificated, the lower court has erected an unjustified barrier to entry into the motor carrier industry—one not countenanced by the Motor Carrier Act, and inconsistent with the National Transportation Policy and the decisions of this Court.

1. To prevent unfair and destructive competition, Congress has chosen to limit entry into the motor carrier industry. S. Rep. No. 482, 74th Cong., 1st Sess. 2; H. Rep. No. 1645, 74th Cong., 1st Sess. 2. The resulting freedom from unrestricted competition, however, does not alter the continuing obligation of certificated carriers to satisfy the shipping needs of their area by maintaining regular and efficient service. Failure by motor carriers to carry out their obligations has prompted the Commission to certificate new service by competing carriers to satisfy public transportation needs. Certification of additional carriers in such circumstances comports with the Commission's mandate to develop "adequate, economical, and efficient service." National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § 1. This Court has expressly approved the practice, stating that "additional certification is the normal and permissible way to deal with generalized inadequacy in service." *Burlington Truck Lines, Inc.* v. *United States,* 371 U.S. 156, 166. "The public is entitled to the benefits of improved transportation"; where an applicant proposes a needed transportation service "the Commission may authorize the certificate even though the existing carriers

might arrange to furnish successfully the projected service." *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 70. See, also, *Schaffer Transp. Co.* v. *United States*, 355 U.S. 83, 90-91; *Atlanta-New Orleans Motor Freight Co.* v. *United States*, 197 F. Supp. 364, 370 (N.D. Ga.).

It is, of course, true that the Commission must also consider "the public interest in maintaining a stable transportation industry." *United States* v. *Drum*, 368 U.S. 370, 374. Thus, in the present case, it was required to determine whether the advantages to shippers and the public of additional competition as a means of assuring a more reliable and efficient system of motor carrier transportation in Mississippi, Alabama and Georgia were outweighed by undue competitive disadvantage to existing carriers. See *Interstate Commerce Commission* v. *Parker*, *supra*, 326 U.S. at 67–68 and 69–70; *Schaffer Transp. Co.* v. *United States*, 355 U.S. 83, 90. The balance it struck was manifestly a proper one.[3]

[3] The record clearly demonstrates the inadequacy of existing service (Statement, *supra*, pp. 5–6). Equally, there is no doubt that the additional certification caused no unfair injury to the existing carriers. Indeed, the Commission found little prospect for diversion of traffic as a result of granting the Braswell application. Most of the appellees' own evidence indicated the likelihood of their continued strength and economic stability despite the increase in competition, because Braswell's joint or multiple line arrangements between some of the points appellees serve are less desirable than the single line operations offered by the existing carriers. Moreover, the routes of many of these carriers are more direct, and thus involve less cost to shippers than the single-line operations Braswell hopes to undertake (App. C, *infra*, p. 39a).

Evidence of traffic operations in this commercially expanding area indicated that authorization of new service in the

2. In contrast, the reviewing court's "second chance" theory is patently unsound. The court failed to recognize "that under some circumstances competition operates to stimulate better service and that reasonable competition may be in the public interest" (*Chesapeake & Ohio Ry. Co.* v. *United States*, 283 U.S. 35, 42–43) and that the value of a new competitive operation as an "effective deterrent to future deteriorations in service" (App. C, *infra*, p. 44a) is itself a factor that the Commission may properly consider in determining that a new certificate should be granted, since "one of the weapons in the Commission's arsenal is the right to authorize competition where it is necessary in order to compel adequate service * * *. The conception that the public must wait while the Commission exercises its statutory

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past has itself generated new traffic. Revenue and traffic of existing carriers have not declined as new operations have been authorized (*id.* at 39a–40a). Shipper testimony further revealed the likelihood of abundant use of the new service without the danger of diversions of traffic presently using existing motor carrier services (*id.* at 37a–40a).

Finally, the Commission concluded that appellees Roadway Express, Inc. and Mercury Freight Lines, Inc., carriers operating from Atlanta and Birmingham to points in east Texas, possessed sufficient power to protect their traffic from diversion by Braswell by continuing to offer expedited service over their routes. These two carriers, whose operations had commenced while the Braswell application was pending, were concerned about new competition because of the little time they have had to establish themselves in the area. The Commission found that Roadway and Mercury will not themselves be able to satisfy the quantitative needs of local shippers for efficient service, particularly since their operations are confined to only one portion of the service Braswell proposes to offer (*id.* at 40a–41a).

powers fortified by orders of court, to compel existing carriers to do what they should do, is one which does not commend itself to common sense and the public interest." *Davidson Transfer & Storage Co.* v. *United States*, 42 F. Supp. 215, 219–220 (E.D. Pa.), affirmed *per curiam*, 317 U.S. 587. See, also, *Atlanta-New Orleans Motor Freight Co.* v. *United States*, *supra*, 197 F. Supp. at 370.

And, contrary to the lower court's assertion (App. A, *infra*, p. 3a), neither the Commission nor the courts have ever recognized any "vested property right" which guarantees to an existing carrier whose service is inadequate "an opportunity either to improve or correct his service * * * or decide whether he wishes to or can furnish the added service" (*ibid.*) before a new certificate may be issued to meet the unsatisfied needs of shippers. Such a rule would seriously hamper the improvement of transportation service where the Commission found existing operations inadequate, and frustrate prompt satisfaction of the public's transportation needs in cases in which the Commission has "doubt that the public interest will be adequately served if resumption of service is left to existing carriers." *United States* v. *Detroit & Cleveland Navigation Co.*, 326 U.S. 236, 241. But also, we stress, a certificate of public convenience and necessity has never been thought to create a vested right to freedom from competition. *Norfolk Southern Bus Corp.* v. *United States*, 96 F. Supp. 756, 761 (E.D. Va.); *North Coast Transp. Co.* v. *United States*, 54 F. Supp. 448, 451–452 (N.D. Calif.), affirmed *per curiam*,

323 U.S. 668; *Inland Motor Freight* v. *United States*, 36 F. Supp. 885, 888–889 (D. Ida.). The Commission was thus fully within its prerogatives in choosing the remedy of competition for the inefficient transportation provided by the existing carriers.

CONCLUSION

Probable jurisdiction should be noted and the judgment below reversed.

Respectfully submitted.

RALPH S. SPRITZER,
Acting Solicitor General.
DONALD F. TURNER,
Assistant Attorney General.
HOWARD E. SHAPIRO,
WILLIAM R. WEISSMAN,
Attorneys.

ROBERT W. GINNANE,
General Counsel,
BETTY JO CHRISTIAN,
Attorney,
Interstate Commerce Commission.

October 1967.

APPENDIX A

United States District Court, Southern District of Mississippi, Eastern Division

Civil Action No. 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Before JOHN MINOR WISDOM, Circuit Judge; GRIFFIN B. BELL, Circuit Judge; and WILLIAM HAROLD COX, District Judge.

PER CURIAM: This suit was instituted for the review of a decision and consequent action of the Interstate Commerce Commission in the award of a certificate of convenience and necessity to a truck-carrier, resulting in an opinon reported in 242 F. Supp. 1016 and consequent order vacating such action of the Commission and remanding the case to the Commission for further consideration and action not inconsistent with the order of the Court. The plaintiffs now move to enforce the judgment of this Court under the All Writs Statute,[1] contending that the action of the Commission subsequent to remand was in disregard, if not in violation, of the opinion and order of this Court. The defendants assail this procedure and contend that a new suit should be filed to review the new opinion, findings and order of the Commission entered

[1] 28 U.S.C., 1964 ed., § 1651.

pursuant to such remand. We disagree with that view. The universal rule is that every court has the inherent power to enforce its judgment and decrees. The All Writs Statute appears as a Congressional reaffirmation of that power. This case was remanded to the Commission with instructions and with the view of affording it an opportunity to comply with such instructions of this Court to enable the Court to properly pass upon the questions presented. The Commission has made a detailed report with findings and conclusions upon which to reaffirm its prior determination as to the public convenience and necessity for the service requested with unimportant exceptions.

It is the considered judgment of this Court that such action of the Commission rectifies only part of the infirmity pointed out by the Court to inhere and exist in the action of the Commission after remand. No further evidence was received or testimony heard by the Commission but it simply made its determination upon the prior record. In criticizing the order of the Commission for the issuance of a certificate of public convenience and necessity, this Court pointed out: "There is no evidence in this record that existing carriers were afforded an opportunity to rectify any such deficiencies in their services. Yet, on April 23, 1965, the Interstate Commerce Commission said: 'We have repeatedly stated that existing carriers normally should be accorded an opportunity to transport all of the traffic they can handle in an adequate and efficient manner without the added competition of a new operation.' The doctrine of stare decisis does not apply to decisions of administrative bodies, but consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily. A healthy and efficient operation is ex-

tremely important to the public interest. One of the basic ingredients in the determination of public necessity is the inadequacy of existing service. The national transportation policy is intended to promote economical and efficient service and foster wholesome and basically sound economical conditions in transportation among the carriers." No attempt was made by the Commission to comply with that requirement of the Court, but the Commission simply rationalized that these protestants could not improve their service or could not furnish the service proffered by the applicant, without offering protestants an opportunity to do so and allowing them to decide whether or not they wished to and could furnish such service. It is true that these carriers do not enjoy exclusive franchises, but they do have valuable property rights and much money and property invested in facilities to properly serve the public and these carriers have a vested property right not to be competed with by any carrier without a valid certificate of convenience and necessity or with an illegal certificate.[1]

While the rule of res judicata is not applicable to administrative agencies, still the fixed policies and well established guidelines of such administrative agencies must have stability and consistency and integrity. The invariable rule of the Commission is and has been for a long time that no certificate affecting the area of another carrier will be issued until that other carrier has been furnished an opportunity either to improve or correct his service to such route or decide whether he wishes to or can furnish the added service sought by the applicant carrier. That policy and practice appears so constant and consistent

[1] *Frost* v. *Corporation Commission of State of Oklahoma, et al*, 278 US 515, 49 S. Ct. 235.

as to constitute a rule of property which may not be violated by the Commission without doing violence to the due process rights of these protestants. It is unthinkable that such a well established rule can be ignored with impunity at will by this Commission. As Judge Brown said: "Our complex society now demands administrative agencies. The variety of problems dealt with make absolute consistency, perfect symmetry, impossible. And the law reflects its good sense by not exacting it. But law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case."[3] Any other course would foster and encourage, if not subsidize, arbitrary administrative action. This administrative agency is extremely important to the proper administration of our interstate commerce and they perform their duties well with a high degree of expertise and skill acquired from a vast knowledge of this subject. But even such an agency may not disregard and depart from well established and deep-rooted policies and practices which appear as rules of property belonging to franchise holders as muniments of title to such valuable property rights.

No overt act was done by the Commission toward complying with this requirement of the Court toward the rectification of the infirmities in its former action. The rationalization by the Commission in this proceeding as to what these protestants wished to do or could do toward furnishing such service to the public

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[3] *Mary Carter Paint Co.* v. *Federal Trade Commission*, (5CA) 333 F. 2d 654, 660; cert. denied 379 US 957, 85 S. Ct. 661.

along their routes did not satisfy the requirements of this Court in such respect.

The motion of the plaintiffs will be sustained to the extent indicated. The findings and conclusions of the Commission as to what any of these protestants wish to do or could do or would do toward furnishing such service will be stricken as inadequate. The consequent order of the Commission based upon such erroneously applied principle of law will be vacated in its entirety. The certificate issued thereon will be cancelled. The Commission and its members and their successors will be enjoined from issuing any certificate of convenience and necessity to the applicant in this case, unless and until the protestants (plaintiffs) are first afforded a reasonable opportunity to furnish such service and either advise the Commission that they do not wish to do so or the Commission finds from experience, after a reasonable opportunity, that they are unable and cannot furnish such service to the public. There will be no taxation of cost.

13th day of May 1967.

JOHN MINOR WISDOM,
United States Circuit Judge.
GRIFFIN B. BELL,
United States Circuit Judge.
HAROLD COX,
United States District Judge.

APPENDIX B

United States District Court, Southern District of Mississippi, Eastern Division

Civil Action No. 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

FINAL DECREE

THIS CAUSE coming on for hearing before this special statutory court, and the Court having rendered its opinion containing its findings and conclusions, of even date;

IT IS ORDERED, ADJUDGED AND DECREED by the Court:

(1) That the plaintiffs' motion to enforce judgment herein is sustained to the extent herein indicated;

(2) That the decision of the Commission, dated January 17, 1966, is erroneous as a matter of law, and such decision and consequent judgment in its Action Number MC-111 383 (Sub Number 16) Braswell Motor Freight Lines, Inc., Extension-Atlanta and the certificate authorized and issued pursuant thereto to such carrier are cancelled and annulled as invalid and void;

(3) That the Interstate Commerce Commission, each of its members and their successors in office, are hereby permanently enjoined from issuing a certificate of public convenience and necessity to the Braswell Motor Freight Lines, Inc., on the application re-

port and order of the Commission, aforesaid. The Court expressly reserves full jurisdiction to issue any necessary process for the proper and necessary enforcement of this decree;

(4) No costs are assessed in this case.

ORDERED, ADJUDGED AND DECREED, this 13th day of May A.D. 1967.

JOHN MINOR WISDOM,
United States Circuit Judge.
GRIFFIN B. BELL,
United States Circuit Judge.
HAROLD COX,
United States District Judge.

APPENDIX C

Interstate Commerce Commission

No. MC–1968 (Sub–No. 73)

Braswell Freight Lines, Inc., Extension—Atlanta

(Renumbered and Reentitled)

No. MC–111383 (Sub–No. 16)

Braswell Motor Freight Lines, Inc., Extension—Atlanta [1]

Decided January 17, 1966

REPORT OF THE COMMISSION ON FURTHER CONSIDERATION

Murphy, *Commissioner:*

By application filed April 28, 1960, as amended, Braswell Motor Freight Lines, Inc., of El Paso, Tex., (formerly Braswell Freight Lines, Inc., also of El Paso) seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle,

[1] By order of the Commission of May 5, 1964, in No. MC–F–8655, *Braswell Motor Freight Lines, Inc.—Merger—Braswell Freight Lines, Inc.*, the merger of the operating rights and properties of Braswell Freight Lines, Inc., into its parent company, Braswell Motor Freight Lines, Inc., was authorized. The merger was consummated on July 1, 1964. By order of the Commission, dated August 13, 1964, in response to an appropriate petition therefor, the Commission substituted Braswell Motor Freight Lines, Inc., as applicant in the subject proceeding, and the proceeding was renumbered and reentitled as described above.

of general commodities, with the usual exceptions, (1) over a system of regular routes extending between Jackson, Miss., Atlanta, and Columbus, Ga., and Birmingham and Montgomery, Ala., as described more fully in appendix A, serving all points within 5 miles of the routes sought, and all points within 15 miles of the principal points situated on the routes, and (2) over two specified alternate routes, between Birmingham and Columbus, and Birmingham and Montgomery, respectively, also as more fully described in appendix A. The numerous motor carriers and railroads named in appendix J oppose the application, and are hereafter referred to by their short titles.

BACKGROUND OF THE PROCEEDING

A significant feature of this proceeding is the extensive shipper support for and rigorous opposition to the application as disclosed by the voluminous record developed here. The hearing extended over more than 14 weeks, and testimony in support of the application was adduced on behalf of more than 300 shippers and receivers, as well as 13 motor carriers which intend to provide connecting services in conjunction with applicant's operations over the proposed routes. The application is opposed by 21 motor carriers and 11 rail carriers. Additionally, five freight forwarders and the Southern Conference of Teamsters intervened in opposition to the application.

Initially, the joint board recommended that the application be denied on the grounds (1) that applicant had failed to show that it is financially fit to provide the proposed service, and (2) that applicant had failed to establish both the operational feasibility of its proposed schedules, as well as a substantial need for the proposed service in view of the existing and adequate

services available, singly and in various combinations, from authorized motor carriers serving the affected territories.

In the prior report, at 95 M.C.C. 457, division 1 reversed the joint board and granted authority to applicant substantially as requested, denying only those portions of the application involving (1) the transportation of dangerous explosives, and (2) service at all off-route points within 5 miles of the proposed routes and those within 15 miles of certain specified points located on such routes. Subsequently, petitions by certain protestants for reconsideration were denied by Appellate Division 1, pursuant to its order of December 28, 1964.

Thereafter, the protestants identified in appendix J hereto instituted a suit in the United States District Court for the Southern District of Mississippi, Eastern Division, in Civil Action No. 1273, to set aside and enjoin the enforcement of this decision. The District Court, in *Dixie Highway Exp., Inc.* v. *United States,* 242 F. Supp. 1016, set aside the report and order of division 1 for want of evidentiary support and adequate findings, and remanded the proceeding for further consideration in accordance with the views expressed in its opinion, as discussed below. By our order of July 19, 1965, the proceeding was reopened for further consideration.

THE DISTRICT COURT'S MANDATE

In remanding the instant proceeding for further consideration, the court was critical of the prior report in a number of respects. Basically, the court noted that in reversing the joint board's recommended denial, the division in the prior report had adopted the statements of fact in the joint board's report, spe-

cifically finding them to be "comprehensive and objective," and "correct in all material respects * * * except as modified * * *." In this connection, the court observed that—

> The commission has dealt with this record throughout its report *in vague and nebulous terms.* Without making any finding of facts from the record to support its conclusions, it has dealt with this problem in its entirety in generalities *without favoring us with any facts to be found in this record to support the conclusion which they reached.* Although the commission expressly adopted the board's statements of fact as being correct in all material respects; and without making any specific findings by the commission which are supported by this record, the commission has nevertheless proceeded to disapprove the sound conclusions (of the joint board); based on such findings to the contrary. (emphasis added)

In questioning the substantiality of the record evidence herein and the adequacy of the findings in the prior report to support the challenged grant of authority to applicant, the court found that the findings of the division in the prior report had failed to rebut specifically the directly contrary findings of the joint board relating to the following factors: (1) the operational feasibility of applicant's proposed schedules and its ability to maintain service under these schedules under regular operating conditions; (2) the substantiality and sufficiency of the transportation needs expressed by the supporting shippers and receivers; and (3) the adequacy of existing services and the effect of a grant herein upon such services, especially the new motor carrier services of Mercury and Roadway which were instituted during the course of the hearings herein. In concluding that it was incumbent

upon the Commission to support its reversal of the joint board with clear and specific findings, the court stated:

> While it is recognized that there must necessarily be some limitation upon specifics in a finding of facts which influence or control commission action, it would appear . . . in view of the commission's adoption generally of the board's findings, that the (Commission) was obliged to state *with more than ordinary specificity* any contrary finding of facts available to it in this record to influence its decision. [Emphasis added.]
>
> * * * * *
>
> The Interstate Commerce Commission in this case had the right and duty to review this record and to make its own determination thereon. It had a positive duty . . . to make its findings and conclusions from the record *with sufficient clarity and specificity* to allow for an intelligent grasp and understanding of the basic facts in the record relied upon by the commission to support its conclusions and ultimate decision. Such findings and conclusions by the Interstate Commerce Commission are lacking in this case * * *. [Emphasis added.]

We recognize that the evidence in the instant proceeding was set forth in abbreviated form in the prior report, and that the joint board's statements of fact were found materially correct and adopted, as modified, but without a spelling out of the modifications effected therein. At the time of the prior report, as now, the board's statements of fact were considered to represent a very able marshalling of many of the material facts. Nevertheless, upon careful reexamination of all the evidence of record we deem it necessary and proper *to modify and, to some extent, supplement* certain segments of the joint board's statements of

fact in order to pinpoint and emphasize certain salient evidentiary facts which in our judgment were not accorded sufficient, or in some instances any, weight by the board in its initial report, and which also were not spelled out in the prior report. Accordingly, and pursuant to the court's directive, we believe that a detailed restatement of the evidence should be made herein of sufficient length and scope, and "with more than ordinary specificity," to apprise the court and the affected parties of the total evidentiary bases upon which our ultimate findings are predicated.[2]

APPLICANT'S PRESENT AND PROPOSED OPERATIONS

Present operations.—Applicant presently is authorized to conduct operations in the transportation of general commodities over an extensive network of regular routes between Memphis, Tenn., Jackson, Miss., and New Orleans, La., on the east, and points in the greater Los Angeles, Calif., area on the west. These routes extend through Louisiana, Oklahoma, Texas, New Mexico, and Arizona, and authorized service points include Baton Rouge, Alexandria, Monroe, and Shreveport, La., Tulsa and Oklahoma City, Okla., Dallas, Fort Worth, Houston, San Antonio, and El Paso, Tex., and Phoenix and Tucson, Ariz., as well as numerous smaller points intermediate to these major population centers. Under its present method of operations, applicant renders daily scheduled service between authorized points in the transportation

[2] No controversy remains at this stage of the proceeding regarding the questions of applicant's financial fitness to perform the proposed service, certain procedural matters, formerly in issue, or the partial denial in the prior report of certain segments of the subject application to the extent described above. Consequently, no further consideration need be given to these matters.

of less-than-truckload shipments, with call-and-demand service afforded for the handling of truckload and substantial volume quantities. Terminal facilities are maintained at all principal points as well as at many smaller communities within its presently served territory. A single, leased-wire, teletype-circuit system connecting all major terminals is maintained for the dispatching of equipment and coordinating of service, and to facilitate tracing when claim problems arise. Applicant operates a substantial fleet of equipment, stationed at various points along the present routes, to assure rendition of adequate and expeditious service.

Proposed operation.—A grant of the requested authority would enable applicant to provide a new service between points on the proposed routes in Alabama, Georgia, and Mississippi, and a single-line service between points on such routes, on the one hand, and, on the other, points on its presently authorized routes. In addition, applicant proposes to connect with all carriers serving major gateway points on the requested routes in the handling of interline traffic moving beyond the territory it now serves and the area embraced by this application. The alternate route authority requested by applicant assertedly would permit it to realize efficiencies and economies in handling traffic between points on the proposed routes such as partial loads destined to Birmingham and Montgomery, in the same vehicle.

Operations over the requested service routes in the handling of less-than-truckload shipments will be conducted daily, 6 days per week, pursuant to 23 proposed operating schedules consisting of 16 over-the-road runs between points on these routes, and 7 peddle-run schedules. All of the proposed schedules are designed to be coordinated wih applicant's present

schedules so as to provide for a minimum handling of traffic en route, and to afford the following time-in-transit service: (1) *overnight service with first morning delivery* between points on the proposed routes in Alabama, Geofgia, and Mississippi; (2) *second morning service* between these points and most of the points on applicant's present routes between and including Memphis and New Orleans, and extending to Dallas and Fort Worth, such as Vicksburg, Miss., and Baton Rouge, Shreveport, Monroe, Ruston, and Minden, La.; (3) *third morning service* with respect to Alexandria, La., and all other points on applicant's existing routes east of and including El Paso, such as Odessa, Midland, Abilene, Waco, San Antonio, and Houston, Tex., and Oklahoma City and Tulsa, Okla.; and (4) *fourth morning service* between the proposed points on the one hand, and, on the other, all points on applicant's present routes west of El Paso, such as Los Angeles and Phoenix. Terminals will be established at Atlanta, Columbus, Birmingham, and Montgomery, and other principal points in the involved area will be served by call stations. Applicant will establish terminal facilities at other points, and additional operating schedules, if the volume of traffic warrants. In order to maintain the proposed transit times between points on its presently authorized routes and those on the proposed routes, freight will be picked up, billed, and dispatched on line-haul trailers the same day it is received from shippers or connecting lines, and in the same manner as operations presently are conducted.

In its initial report, the joint board questioned the operational feasibility of the proposed service, concluding on page 9 thereof that it—

> * * * is not convinced that the applicant could maintain the schedules as proposed in this application * * * under regular operating con-

> ditions to any substantial degree more than the protestants had always met their holding out transit time. *The applicant did not elect to establish through the probative evidence the fact that they are now maintaining these same schedules over their present operation,* and to its conclusion the joint board had to rely on data taken from the numerous exhibits filed in this application where (applicant) had participated in the movement. Analysis of these shipments revealed that (applicant) had not always made the schedules on their present operation * * *. (emphasis added)

The evidentiary support underlying and clearly warranting the contrary finding in the prior report, at 95 M.C.C. 457, 461, that "In many instances applicant's proposed schedules would enable faster and more consistent service than is available from existing motor common carriers," was not specifically spelled out in that report. In light of the court directive, however, this gap in the prior report can be rectified by, initially, noting that applicant introduced an exhibit (appendix 21 to exhibit No. 7, consisting of 1,745 freight bills) showing its transit-time service performed during representative periods and between points on pertinent segments of its present routes. This evidence, as summarized in appendix B, indicates that applicant can and does, under normal operating conditions, maintain its presently scheduled service as held out, and affords a reasonable basis for concluding that the delivery schedules applicant here proposes to provide are entirely feasible.

Further, and particularly germane to this question, other of the "numerous exhibits filed in this application where (applicant) had participated in the movement" which the joint board regarded as showing an inability by applicant to maintain operations in

accordance with its present schedules, when examined closely, warrant a contrary finding. Many of the supporting shippers and receivers, as shown on the service exhibits they sponsored, have had satisfactory experience with applicant's present service. Applicant's average transit-time service, as reflected in these exhibits, a recap of which is set forth in appendix C, as well as the overall quality of its service as favorably characterized by many other supporting shippers and receivers familiar with its service and described in appendix I, are further persuasive indicia that applicant regularly maintains its scheduled service between points on its existing routes,[3] and that it can and will provide a similarly consistent and dependable service in the operations proposed herein.

Also of significance is the fact that several opposing motor carriers actually adduced evidence affording cogent proof that applicant can be relied upon to maintain its scheduled service as herein proposed. For example, as shown in appendix K, which is a summary of protestants' operations, Transcon concedes the operational feasibility of the proposed schedules, and Roadway and Mercury under their newly instituted services presently are affording the same times in transit between certain involved points as are here proposed by applicant.

SUPPORTING EVIDENCE

Background.—The application is supported by a substantial cross-section of the shipping and receiving public throughout the areas affected by the instant application. These 293 witnesses represented more

[3] See also applicant's exhibits 743, 745, and 746, showing applicant's transit time afforded on movements handled under its present authority in accordance with its scheduled operations.

than 300 business entities, including some 85 shippers or receivers located at 16 points on the proposed routes and about 225 businesses located at 28 points on applicant's present routes. Of these shippers and receivers, approximately 243 were represented by witnesses who actually testified at the hearings and were subject to cross-examination. In an effort to develop the record fully, but at the same time to conserve time and expense for the Commission and the parties, the facts concerning the remaining supporting shippers were made the subject of stipulations between the parties tied directly to the evidence submitted by a similar shipping or receiving organization which had presented testimony. For ease of identification, appendix E hereto contains an alphabetical list by States of the cities in which the supporting witnesses are located and the number of such witnesses from each point, together with the population data regarding such points that was available at the time of the hearings herein.

The joint board summarized the evidence presented or stipulated by these witnesses in appendix D to its report which was adopted generally by division 1 in its prior report. This appendix reflects numerous instances of deficiencies in the existing transportation services experienced by a majority of the supporting witnesses. However, the joint board, although it recognized on page 11 of its report that these witnesses "have established of record a number of service experience(s) in the use of existing carrier operations which are not ideal and (in) which improvement is desirable," concluded that the supporting evidence was insufficient to establish a reasonable need for the proposed service. The joint board based this conclusion upon specific findings that none of the supporting witnesses ever had experienced refusals to perform serv-

ice or unreasonable delays in receiving pickup service on the part of existing carriers; that most of the supporting shippers and receivers had made no serious effort to utilize the numerous combinations of available services in order to improve their transportation service; and that most of the complaints registered by these witnesses had never been directed to authorized personnel of the carriers utilized. Further, the joint board accorded minimal weight to the approximately 250 service exhibits sponsored by the supporting witnesses and reflecting times in transit experienced on approximately 6,600 shipments, finding instead that these exhibits were not representative of the service normally experienced by the affected shippers and receivers, and favoring the rebuttal exhibits sponsored by several protestants. In this connection, the board determined, on page 10 of its report, that—

> The bills used as supporting data covering the exhibits of the supporting witnesses did not cover all of the shipments moving over any given (period) of time, but you might say were random or hand-picked * * *. If a particular period of time had been used and all of the shipments made during this period had been shown, the joint board would have weighed the evidence in a different light, but in rebuttal to (this) evidence * * * the protestants listed all shipments covering a particular period of time and this evidence did not reveal the same average transit time, therefore, the joint board is of the opinion that the exhibits (of the protestants) using a particular period of time and showing all the shipments moving during this period would convey a truer picture of the service now being rendered by the carriers now handling the traffic.

Upon reconsideration of this matter we are of the opinion that the foregoing findings of the board were

not adequately considered or rebutted in the prior report. For this reason, and in accordance with the directive of the court, each of these determinations will be dealt with specifically below.

In view of the magnitude of the instant proceeding and of the court's mandate, we believe it is incumbent upon us to provide a thorough and comprehensive analysis of the voluminous amount of supporting evidence adduced by the applicant herein. Moreover, our re-examination of the record persuades us that a marked number of the summaries of the testimony of the supporting witnesses set forth in appendix D to the joint board's report fail to reflect a complete and accurate picture of these witnesses' transportation problems, and, in addition, tend to emphasize certain factors, such as failure by most of these witnesses specifically to request applicant to file the instant application, that have no proper bearing on a determination of the issues involved. For these reasons, we have set forth in appendix F hereto a detailed restatement of the evidence adduced by the supporting witnesses who actually testified in order to clearly indicate the bases upon which the shipper support for applicant's proposal is predicated. For clarity of discussion, the salient features of this supporting evidence will be set forth in the body of this report.

Nature of complaints about existing services: (1) transit time.—The most serious and recurring complaint directed against existing services is that relating to excessive and inconsistent transit times. All of the supporting shippers and receivers, which, collectively, ship or receive a wide variety of commodities, express dissatisfaction with this aspect of existing services. It has been their experience that a substantial number of their shipments moving between points in the affected areas, and handled by the opposing motor

carriers in single, joint, and multiple-line service, as well as by the protesting railroads and under freight forwarder arrangements, are delayed frequently because of excessive time-in-transit. A significant number of the supporting witnesses are well acquainted with this facet of the existing transportation services utilized, as reflected by the 250 service exhibits sponsored by that number of shippers and receivers to corroborate this phase of their testimony. These exhibits were based upon data compiled in the usual course of business from which the transit times afforded by the moving carriers could be reliably computed. Collectively they depict a total of 6,600 shipments, a substantial majority of which were afforded inconsistent and excessive transit times as handled by various motor protestants, singly and in combination, over periods of time ranging from several months to a year in duration. A recapitulation of the transit times reflected on these exhibits shows that an appreciable volume of traffic moving between points on the proposed routes, regarding which applicant proposes overnight service, has been subjected to service ranging from 1 to 16 days in transit, and averaging approximately 3.36 days. A substantial volume of the listed shipments moving from and to points between which applicant proposes second morning service were afforded transit times ranging from 2 to 20 days, and averaging 6.02 days. Traffic shown on these exhibits which moved from and to points between which applicant proposes third morning service was subjected to transit times ranging from 3 to 14 days, and averaging 6.85 days. Shipments moving between points where fourth morning service is proposed were afforded transit times ranging from 4 to 14 days, and averaging 8.41 days. Many of these exhibits do not

include all shipments during the periods involved, but in such instances were submitted as representative of the transit times generally experienced in connection with shipments moving between the points involved. Of these 250 service exhibits, 60 were admitted into evidence on stipulation, and it is impossible to discern the percentage of the shipments for any period shown thereon that these exhibits cover. However, approximately 52 of the remaining 190 shipper and receiver exhibits reflect from 75 to 100 percent of all of the shipments made or received for the particular period covered, and some 20 others contain between 50 and 75 percent of the witnesses' traffic for the time reported and, in our opinion, are fully entitled to be considered representative of the experience of these shippers.

In an effort to rebut the showing of the transit-times experienced by the supporting witnesses, several opposing motor carriers sponsored a series of similar service exhibits designed to show the transit time provided by them on other shipments handled at later periods between the same points. This evidence is fully described in the summary of protestants' operations set forth in appendix K. Most of these exhibits include the total number of shipments transported during the selected periods they cover, which range generally from one day to several weeks. Others purport to show transit times afforded representative shipments handled for several of the supporting witnesses during periods of somewhat longer durations. Generally, the periods covered by protestants' service exhibits relate to a time subsequent to the notice or commencement of the instant hearings, and cover different periods than are reflected in the service exhibits sponsored by the supporting witnesses. These exhibits disclose different and, in some instances,

more expeditious transit times than those depicted in the supporting witnesses' exhibits.

In summarizing this information in its report, the joint board, as noted, questioned the representative quality of the supporting witnesses' service exhibits on the ground that the bills used as underlying data for many of these exhibits did not cover all of the shipments moving over a given period of time, but, rather, were intentionally selected only for those shipments on which delayed service was experienced in order to present a distorted picture of the quality of service in the involved area. Accordingly, the board resolved the matter in favor of protestants, and concluded that the transit-time service depicted on those exhibits of the supporting witnesses where less than all of the shipments for a given period were listed is not generally representative of the quality of service afforded by the existing carriers in the involved areas; and that the protestants' rebuttal service exhibits convey a truer picture of the time-in-transit services actually provided by the carriers in the affected territories. We cannot agree with the board's determination in this respect. First, as noted, many of the supporting exhibits cover between 50 and 100 percent of the traffic moving for the periods reported, and the representative quality of these exhibits, accordingly, cannot seriously be challenged. Moreover, it appears that in many instances exhibits which include less than 50 percent of the traffic transported were compiled through the use of valid sampling techniques. This is demonstrated by the following testimony of a supporting witness, which is generally characteristic of the testimony of the other supporting witnesses who sponsored the service exhibits which list less than 50 percent of the traffic moving for the periods reported:

Q. How did you select (the freight bills from which Exhibit 40 was made), sir? What method did you use?

A. Well, sir, our freight bills when they are paid, are filed alphabetically with the carrier. In order to obtain freight bills for this check, we picked representative carriers out of the file whom we know were handling freight from the south for us. We did not know before the bills were pulled whether this carrier was a bad carrier—whether the carrier we pulled was good or bad. We merely went to the file, opened the door and pulled * * * a certain number of their bills. * * * the transit times * * * were not checked by me when the bill was pulled. * * *

Q. Did you select them to show anything in particular?

A. We selected them for no reason except to get a group of bills covering merchandise shipments from the south.

As noted, periods of time covered by the protestants' service exhibits generally occurred subsequent to the notice of commencement of the hearings herein. Thus, most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise. We are not persuaded that the exhibits of protestants show anything more than satisfactory transit-time service performed for short periods when faced with the possibility that competitive service by this applicant might be authorized in the instant proceeding. In the circumstances, it is our considered opinion that the exhibits sponsored by the supporting shippers and receivers convey a truer picture of the overall pattern of transit-time service existing in the affected areas.

(2) *Pickup and delivery service.*—A substantial number of the supporting shippers and receivers at points in Alabama, Georgia, Mississippi, Louisiana, Texas, and California, also complain about numerous instances of excessive delays in pickups or deliveries experienced recurrently in utilizing existing services. These complaints are more fully described in summaries of shipper evidence contained in appendix F. In brief here, approximately 43 of these witnesses registered specific complaints of this nature. The nature of the pickup difficulties experienced is confined generally to situations where pickups were not made on the same day the carrier was requested to do so by the shippers, with a consequent delay of one day or more. Such delays have resulted in crowding of shipping dock space, holding employees overtime, and the necessity of delivering the shipments to the carrier's dock to assure prompt dispatch of freight. Similarly, difficulties in local deliveries were often experienced by the affected receivers. In such instances, these witnesses have been faced with the alternative either of picking up incoming shipments themselves at the carrier's docks to receive delivery on the day of arrival, or of experiencing a delay of one day or more if delivery is left up to carrier arrangements. Such pickup and delivery deficiencies have been experienced often by the affected supporting witnesses in utilizing the services of Dixie, Bowman, Delta, Couch, Deaton, Campbell 66, A–No, Transcon, T.I.M.E., Gordons, Baggett, and Ryder. In our opinion, the evidence demonstrates that, contrary to the findings of the joint board, a significant number of supporting shippers have experienced unreasonable delay in pickup and delivery by existing carriers.

(3) *Interchange.*—In addition to the above-described complaints about existing service deficiencies,

many of the supporting witnesses object to excessive handling of their perishable or fragile freight with attendant loss and damage experienced in ultilizing available joint or multiple-line services. Approximately 30 supporting witnesses cited specific instances concerning this aspect of existing service.[4] Further, frequent difficulties in tracing lost or delayed shipments, and in attempting to settle claims, are encountered in connection with excessive handling in transit of the supporting shippers' and receivers' traffic. In all, 107 shippers and receivers cited instances of recurring tracing and claim-service deficiencies experienced in utilizing existing transportation services.

Moreover, many supporting shippers and receivers who experienced these difficulties in utilizing available single, joint, and multiple-line motor carrier services have complained about such deficiencies to the moving carriers without any subsequent appreciable improvement in such services. To emphasize this factor, a representative list identifying 76 supporting witnesses who registered complaints, and the carriers to which the complaints were directed, is set forth in appendix G. While the joint board minimized such complaints on the ground that they were not registered to authorized personnel of the carriers involved, the evidence clearly demonstrates that these complaints, for the most part, and those described in appendix G in particular, have been made to a proper carrier representative such as the local terminal manager, traffic manager, dock foreman, or other person clothed with responsibility. In addition

[4] See, e.g., exhibit 104, sponsored by Levy's Department Store, of Tucson, Ariz., showing that approximately 50 percent of the 88 shipments listed thereon, and handled in a three-line haul, had loss or damage notations on the underlying bills.

to their own complaints, many of the supporting shippers have, in turn, received complaints of the same nature concerning existing transportation services from their customers at various involved points in Alabama, Georgia, Mississippi, Texas, California, and Oklahoma.

Relation of supporting witness complaints to their transportation requirements.—Certain vital aspects of the supporting shippers' and receivers' operations are dependent upon a reasonably consistent, scheduled transportation service affording prompt pickups and deliveries, and expeditious time-in-transit handling of their freight, such as here proposed. As a result of inconsistent and excessive transit times, pickup and delivery delinquencies, and the other service deficiencies experienced on a recurring basis, and complained of in utilizing existing transportation facilities, a significant number of the supporting shippers and receivers have been materially hampered in conducting their respective businesses in such particulars as (1) inability to reduce inventories where storage space and investment capital are limited, and to maintain production schedules; (2) inability to get timely deliveries, or to service customers on special and rush orders consisting, for example, of seasonal and promotional merchandise not in stock or merchandise involving government contract work containing penalty clauses for delays if timed deliveries are not effected; and (3) inability to take short term discounts.

These impediments to the ability of these shippers to conduct their businesses economically and efficiently have, in turn, made it difficult for them to effectively compete in markets they presently serve as well as in markets they are seeking to develop. Perhaps the most detrimental effect experienced by the supporting

witnesses in utilizing existing services, however, has involved lost business and accounts. Approximately 49 supporting shippers and receivers at points in Alabama, Georgia, Louisiana, Mississippi, Oklahoma, and Texas cited instances of loss of customers and cancelled orders stemming from excessive delays both in transit and in pickups and deliveries of their freight afforded by the existing single and joint-line services utilized, as well as from losses and damage occasioned in utilizing many available joint and multiple-line services. Further, because of the experienced inconsistent and slow transportation services available at the preferred sources of supply at points on the proposed routes, many of these witnesses have been forced to purchase in local or nearby markets from which a more expeditious service is available, and pay higher or premium prices or accept inferior merchandise, in order to insure a reasonable delivery time and, thus, obtain customer satisfaction and remain competitively effective. For example, the narrations of shipper and receiver evidence contained in appendix F indicate that many businesses in Baton Rouge and at such west Texas points as Abilene, Odessa, Midland, and El Paso, are forced to purchase in nearby New Orleans, Houston, or Dallas markets and pay a higher price than available from the preferred Atlanta or other southeastern market. Approximately 45 of these businesses will substantially increase purchases from Georgia and Alabama sources if a reliable and expeditious transportation service from these market points can be obtained. In fact, many of the supporting shippers and receivers estimate that their traffic moving between points in the involved areas would be substantially increased by specified tonnages or percentages of sales or purchases if a dependable

transportation service in the affected areas, such as here proposed, was available.

Territorial pattern of shipper and receiver operations.—The respective outbound or inbound traffic patterns of the supporting witnesses generally fall into three definable groups. The traffic of a majority of the supporting shippers and receivers moves between points on the proposed new routes, on the one hand, and, on the other, points presently served by applicant. However, important support of the application also is based upon a need for service solely, or at least in part, between points in Alabama, Georgia, and Mississippi on the proposed routes, as reflected in the evidence adduced by 59 of the supporting shippers and receivers and summarized in chart form in appendix H. Thirdly, some of the traffic involved moves to, from, and beyond points on the proposed routes, on the one hand, and, on the other, to, from, and beyond points on applicant's present routes. The same complaints concerning deficiencies in existing services, and the dissatisfaction with such services, for the reasons outlined above, are applicable to all the supporting shippers and receivers regardless of the traffic pattern or patterns into which their movements fall.

Substantial population and attendant industrial growth in the involved areas.—Evidence also was presented by applicant pertaining to the population growth and attendant wide-spread industrial expansion taking place in both the area in which the proposed routes are located in the southeast, as well as the areas presently served by applicant. Appendix D hereto sets forth, in chart form, a comparison in the growth of populations of the counties in which the principal points on the proposed and present routes are located occurring between 1940 and 1960. (Applicant anticipates that this same economic growth would

enable protestants generally to maintain their present volumes of traffic despite some diversion to applicant.)

Degree of utilization by supporting witnesses of existing services.—Despite the joint board's finding to the contrary, a careful analysis of the record clearly shows that a substantial number of the supporting shippers and receivers have utilized the services of the available single-line carriers as well as of numerous feasible combinations of carriers affording joint or multiple-line services in an unsuccessful effort to move their traffic in a more expeditious manner possible. Many of these witnesses, in addition, have experimented with various gateway routings in order to subject their traffic to a minimum of delays and other difficulties experienced in the handling of their traffic by existing carriers, also to no avail. The only services that have not been utilized to any appreciable degree are the newly instituted operations of Mercury and Roadway between the Atlanta-Birmingham area, on the one hand, and, on the other, Dallas-Fort Worth and Houston, commenced during the course of the hearings herein. Some combinations of services and routings have not been tested or utilized to any material extent because they are considered patently impractical as involving excessive circuity of routings or an excessive number of interchanges enroute. Further, a number of the supporting witnesses have given up their efforts to improve their transportation service and, while paying the freight charges or reserving the right to control the routing, have permitted their shipments to be routed by their consignors in the hope that the latter will be able to obtain a more expeditious transportation service.

Significantly, an appreciable number of the supporting witnesses are familiar with applicant's present scheduled service performed for them on direct move-

ments of their traffic as well as under joint or multiple-line arrangements, as described in appendices C and I, and such service is characterized as expeditious and dependable. In connection with the movement of traffic in which applicant has participated under joint or multiple-line arrangements, it appears that in many instances, as reflected in the chart contained in appendix C, the transportation difficulties experienced occur while the freight is in the possession of other participating carriers beyond applicant's lines. Accordingly, the involved shipper and receiver witnesses support applicant's proposed operation in an effort to obtain improvements in both the single and joint-line services now available. While they recognize that applicant's proposal will not provide a panacea for all of their transportation problems in every instance, they consider that the proposed service would be free from many of the deficiencies in the services of, and superior to the services afforded by, the existing carriers.

As noted, 13 motor carriers support the application in order to compete and participate more effectively in a greater volume of traffic handled to and from the areas they serve and those proposed to be and presently served by applicant and beyond. If the application is granted, they propose to enter into appropriate interchange arrangements with applicant to handle such traffic in an improved joint-line service, interlining at such points as Atlanta, Birmingham, Montgomery, Los Angeles, and Phoenix.

OPERATIONS OF OPPOSING PARTIES

Opposing motor carrier.—Briefly, the opposing motor carriers fall into two groups defined by the territories they are authorized to serve. One group is composed of those carriers holding authority to transport

general commodities over both regular and irregular routes in the three States in which the proposed routes are located. Some of these carriers operate over routes which traverse or parallel segments of the proposed routes in Alabama, Georgia, and Mississippi. The carriers in the second group hold operating authorities paralleling portions of applicant's present as well as proposed routes. Collectively, these carriers provide some single-line service as well as considerable joint-line service throughout the affected areas, utilizing the Memphis, Jackson, or New Orleans gateways, respectively. Our reappraisal of that portion of the record involving protestants' operations persuades us that the joint board's summaries concerning each opposing carrier, as set forth in appendix F to its report, fail to disclose a complete portrayal of the respective services afforded by these carriers in the affected areas, and of their competitive positions in such areas. In the circumstances, and mindful of the court's directive, a comprehensive restatement involving a description of the authorities of, and types of service afforded by each of these carriers is set forth in appendix K, and need not be repeated here, except to note that none of the motor protestants can provide the extensive single-line service proposed by applicant between points on the routes applied for, on the one hand, and, on the other, points on applicant's present routes in Mississippi, Louisiana, and Texas intermediate to Jackson and to Dallas-Fort Worth.

Opposing railroads and freight forwarders.—Rail services, which extend over a network of routes throughout the proposed area, and services provided under freight forwarder arrangements, generally have afforded slow and inconsistent transit-time operations to the extent utilized by many of the supporting shippers and receivers. The operations of the involved

freight forwarders generally are the equivalent of those of the opposing railroads, because they utilize rail carload service and rates from origins to break-bulk points, from which motor carrier service is used for distribution. Under forwarder arrangements, sufficient shipments initially must be consolidated into a rail carload before the rail cars are dispatched in regular train service.

Opposing shippers.—Three shippers presented evidence in opposition to the proposed operation. Two are located at Columbus, and one at Montgomery, and collectively they distribute their merchandise at points throughout the affected territories. They generally have found the single and joint-line services afforded by Dixie and some of the other presently available carriers to be adequate for their requirements, although one of the shippers at Columbus has been receiving customer complaints regarding Dixie's transit-time service. This shipper is not familiar with the transit-time handling of its freight by the carriers utilized, and, if found excessive, would utilize applicant's proposed service instead. The opposing Montgomery shipper honors no other customer routing but "Dixie," and would not be willing to test applicant's proposed service regardless of the quality of its operation.

DISCUSSION AND CONCLUSIONS

In a proceeding of this magnitude, it is critical to a fair and proper determination of the merits of the instant application that we not be overwhelmed by the sheer numerical abundance of either supporting shippers and receivers or opposing carriers. Rather, we must concern ourselves with determining the extent and reasonableness of the overall transportation needs established by the segment of the shipping and re-

ceiving public asserting a need for this applicant's service and the ability of existing service in the area to meet the requirements of these shippers.

Keeping these fundamentals in focus, we are convinced upon further consideration of all evidence of record that applicant has met its burden of establishing a clear and substantial need for the proposed service, to the extent set forth in the findings herein. The dissatisfaction with existing transportation facilities on the part of the affected shipping and receiving public supporting the instant application stems from several distinct service deficiencies experienced by these businesses on a recurring basis. In part, these deficiencies relate to pickup and delivery delinquencies impeding the expedition with which the freight of many of the affected shippers and receivers has been handled. Another source of dissatisfaction on the part of numerous supporting witnesses concerns excessive handling in transit of their traffic in many instances under joint or multiple-line arrangements, resulting in delays through interchange, loss and damage to shipments of fragile and perishable lading, and tracing and claims difficulties. The service deficiency most frequently experienced by the supporting shippers and receivers, however, and upon which their support of the instant application substantially is predicated, involves the inconsistent and excessive transit times to which their traffic is subjected. In fact, the extraordinary amount of support for applicant's proposal by the affected segment of the shipping and receiving public can be characterized as impressive, not from any numerical abundance of witnesses involved, but, rather, from the substantial volume of traffic moving between the points and over the routes affected by the instant application which their businesses represent and which a preponderance of the evidence

establishes is not being handled with the dispatch or consistency that reasonably may be expected under normal operating conditions.

We believe that the shipping and receiving public is entitled to consistent scheduled transportation service so that the arrival and departure times of their shipments can be predicted with reasonable certainty. Otherwise, such vital matters affecting the conduct and sales promotion of their businesses as maintenance of production schedules, control of limited inventories, ability to purchase at markets affording quality merchandise at reasonable prices and from which adequate service is available, accommodating customer requirements for timed deliveries, and taking advantage of short term discounts and payment after arrival of goods must suffer. See, e.g., *M.R. & R. Trucking Co. Extension—Atlanta, Ga.*, 82 M.C.C. 473, aff'd. *Atlanta-New Orleans Motor Freight v. United States*, 197 F. Supp. 364. The instant record is replete with instance wherein the supporting shippers and receivers have been and are critically hampered in the conduct of one or more of these vital factors affecting their respective businesses because of the described deficiencies in the transportation services utilized. As a result, the efforts of a majority of these shippers and receivers to remain effectively competitive in the areas of their operations, and to exploit new sources of supply and markets of distribution, have been materially impeded. In addition, the severe economic harm suffered by a marked number of the supporting witnesses through loss of accounts and orders, attributable to the deficiencies experienced in the transportation facilities utilized, further and vividly attests to the validity and urgency of the supporting shippers' and receivers' desire for a more expeditious and consistent motor service of the type

here proposed. Considering the experiences of these supporting shippers, it is apparent that their complaints concerning existing transportation services are well founded and reasonable.

We are fully cognizant that the affected areas are served by a large number of carriers authorized to perform operations throughout various portions of these territories. In this connection, however, and despite the joint board's contrary finding in this respect, we have found that the record clearly establishes that a substantial number of the supporting shippers and receivers have made a conscientious and serious effort to utilize all of the direct motor services, with the exception of the relatively new Roadway and Mercury operations, considered separately below, as well as numerous feasible combinations of motor service available, in an attempt to improve their transportation facilities and expedite the handling of their traffic, without achieving this result. Similarly, long-distance shipments frequently are tendered to various rail carriers and freight forwarders, but the same service deficiencies generally are experienced in such instances. Complaints about all of the described service deficiencies have been registered by a marked number of the involved shippers and receivers experiencing these transportation problems on a recurrent basis to at least 30 of the carriers utilized with no appreciable improvement in these essential elements of service.

Where, as here, both single-line and the most feasible combinations of joint and multiple-line services, as well as the services afforded by the rails and under freight forwarder arrangements, have been investigated and utilized by an appreciable number of supporting witnesses, and found wanting in the material respects hereinabove described, we consider this to be

a sufficiently representative effort on the part of the involved shippers and receivers to enable us accurately to evaluate the overall quality of the existing transportation services in the involved areas. In our opinion, protestants have not demonstrated that they can be depended upon to provide the type of service of which they claim to be capable, at least for the substantial segment of the shipping and receiving public represented in this proceeding. We conclude, therefore, that the conduct and promotion of the businesses of the supporting witnesses are being hampered by material deficiencies in existing transportation facilities; that protestants' overall services provided for these witnesses in the affected areas have not measured up to a quality of service that can be classified as reasonably adequate; and that authorization of the proposed service will inject needed improvements in the transportation services presently available to the supporting shippers and receivers in these areas.

There is ample evidence that many of the supporting witnesses are satisfied users of applicant's present operation, enjoying consistent and expeditious scheduled service between the points now served by applicant. As noted, no showing of record has been made that applicant will be unable to afford similar service between the proposed points, and between such points and those on and beyond its present routes. On the contrary, we have found that the feasibility of the proposed schedules has been reasonably established. We are persuaded that operations under the proposed service will result in significant reductions in the transit times presently consumed by existing transportation facilities in handling shipments moving both in single and joint-line service between points in the affected areas, and in multiple-line service between

points in the affected areas, on the one hand, and, on the other, points beyond,[5] to the substantial benefit of the supporting witnesses. In addition to affording an expeditious and dependable service for this segment of the affected shipping and receiving public, the proposed service also will enable many of these witnesses to increase their sources of supply and markets of distribution, with an accompanying and substantial increase in their volumes of traffic moving from and to points in these areas shown to be experiencing marked population growth.

Having determined that a need exists for the proposed service, and that the overall service pattern in the involved areas is below the level of quality to which the affected shipping and receiving public reasonably is entitled, there remains for consideration the question of whether a grant of the requested authority would so endanger or impair the operations of existing carriers, as claimed by them, as to be contrary to the public interest. In discussing this aspect of the proceeding, one significant factor should be noted at the outset, namely that the potential volume of traffic which the proposed service reasonably can be expected to generate in the affected areas will add substantially to the already heavy volume of freight

[5] The traffic of the supporting witnesses presently moving between points in the affected areas, on the one hand, and, on the other, points beyond the scope of applicant's present and proposed routes, is that traffic to which the prior report had reference in its finding that "* * * a large percentage of shipments moving between points in the considered territories still require three (or) four interchanges en route." (95 M.C.C. 457 at 463), which finding was challenged by the court. While the proposed service, if initiated, undoubtedly will reduce the number of interchanges required to handle such traffic, this is but one factor in our overall consideration and resolution of the issues herein.

moving between points in these areas that are continuing, to experience economic expansion. In an attempt to show that the introduction of applicant's service within the areas covered by the proposed routes would impair their ability to provide service within the scope of their respective authorities, some of the protestants sponsored certain tonnage exhibits listing traffic that purportedly would be subject to diversion in the event the instant application is granted. A substantial portion of the traffic covered by these exhibits, however, consists of shipments moving from or to on-line points served directly by the protestants, but not within the direct scope of applicant's present or proposed service. A diversion of such traffic to any marked extent from the single-line services presently afforded by the involved protestants to applicant's service under joint or multiple-line arrangements, if the proposed operation is authorized, appears highly improbable. Indeed, even traffic handled by authorized protestants moving between the important commercial centers of Memphis, New Orleans, and Houston, which are points on applicant's present routes, on the one hand, and, on the other, points on the proposed routes will undoubtedly, and as conceded by applicant, continue to remain predominantly within these protestants' domain, in view of the fact that these carriers operate over more direct routes between such points than would applicant under its proposal. In fact, only one supporting witness from New Orleans, and none from Memphis and Houston, were presented, because applicant's proposal does not contemplate a service that would appreciably benefit shippers and receivers at these particular points.

Further, the evidence clearly supports the finding in the prior report that other carriers serving the involved areas, such as Dixie, for example, have con-

tinued to realize substantial increases in traffic and revenues, or at least have continued to operate at the same level of business, even subsequent to the authorization of additional competitive services from time to time including the new Roadway and Mercury operations. In the circumstances, we are unable to discern any evidence of record that indicates with appreciable precision the volume of traffic that protestants other than Roadway and Mercury would lose, and to what degree their operations would be adversely affected, if the proposed service is instituted.

With respect to the newly instituted services of Roadway and Mercury, the large volume of Atlanta and Birmingham—Dallas and Fort Worth traffic generated by these expedited services shortly after their initiation, and primarily handled for shippers and receivers other than those supporting the instant application, attests cogently to the existence of a substantial amount of traffic at these points alone that can materialize through the institution of an improved transportation service. We have pointed out previously that the institution of applicant's proposed service reasonably can be expected to generate a similarly substantial volume of traffic on the part of at least the supporting shippers and receivers here, both in the area served by Roadway and Mercury, and in the other areas affected by the application. We are cognizant, of course, that the services of Roadway and Mercury instituted at the time of the hearings herein have afforded needed improvements in existing service for an appreciable segment of the shipping and receiving public whose freight moves between the Atlanta and Birmingham area, on the one hand, and, on the other, the points in the east Texas area served by these carriers. Nevertheless, the demonstrated

overall present and potential volume of traffic available at these points alone convinces us that the operations of Roadway and Mercury do not represent a sufficient quantum of motorcarrier service to meet all of the established transportation requirements of the affected shipping and receiving public in this commercially expanding area; and, therefore, that the initiation of the proposed service in this area would be in the public interest. Compare *Roadway Exp., Inc., Ext.—Birmingham, Dallas, Houston,* 82 M.C.C. 689, 705. Further, the new operations of these two protestants offer no answer to the transportation difficulties experienced by a large segment of the supporting shippers and receivers at points in Mississippi, Louisiana, western Texas, Oklahoma, Arizona, California, and portions of Alabama, which are not served directly by either of these carriers.

In the circumstances, we conclude that the clear and substantial benefit to the affected shipping and receiving public that would result from making available the improved service here proposed warrants the grant of authority set forth below. The reasonable competition that the proposed service can be expected to stimulate in all of the affected areas should, in addition, serve as effective deterrent to future deteriorations in service which are contrary to the public interest. Moreover, we are convinced that carriers such as Roadway and Mercury have the power in their hands, through continuing to offer expedited service in their authorized areas, to minimize any diversion of traffic to this applicant's service.

One final matter should be discussed. Several protestants challenge a grant of the requested alternate route authority between Birmingham and Montgomery, and between Birmingham and Columbus,

respectively, on the ground that the basic tests of alternate-route proof have not been met. The fact that applicant presently does not have appropriate service routes to which the proposed alternate routes would be appurtenant is not necessarily a controlling determinant. The instant record, however, indicates that this portion of applicant's proposal relates to some vague and undefined operating economies that might result and is not responsive to any clearly demonstrated need. While operations over the proposed alternate routes purportedly would enable applicant to handle partial loads to Birmingham-Columbus or to Birmingham-Montgomery in a manner designed to economize on costs and equipment, such operation appears to be somewhat inconsistent with the crux of applicant's proposed service which is to provide a daily scheduled service over each of the requested service routes. Accordingly, no reasonable basis is discernable for authorizing this segment of the proposed service.

FINDINGS

Upon further consideration, we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except those of unusual value, livestock, classes A and B explosives, household goods, commodities in bulk, and those requiring special equipment), (1) between Jackson, Miss., and Atlanta, Ga., from Jackson, Miss., over U.S. Highway 80 to the junction of U.S. Highway 11, thence over U.S. Highway 11 to Birmingham, Ala., thence over U.S. Highway 78 to Atlanta, Ga., and return over the same route, serving all intermediate points; (2) between Birmingham, Ala., and Atlanta, Ga., from Birming-

ham, Ala., over U.S. Highway 11 to Attalla, Ala., thence over U.S. Highway 411 to junction of U.S. Highway 41, thence over U.S. Highway 41 to Atlanta, Ga., and return over the same route, serving all intermediate points; (3) between Jackson, Miss., and Atlanta, Ga., from Jackson, Miss., over U.S. Highway 80 to Tuskegee, Ala., thence over U.S. Highway 29 to Atlanta, Ga., and return over the same route, serving all intermediate points; (4) between Tuskegee, Ala., and Atlanta, Ga., from Tuskegee, Ala., over U.S. Highway 80 to Columbus, Ga., thence over Alternate U.S. Highway 27 and Georgia Highway 85 to Manchester, Ga., thence over Georgia Highway 85E to Woodbury, Ga., thence over Georgia Highway 85 to Atlanta, Ga., and return over the same route, serving all intermediate points; and (5) between Opelika, Ala., and Columbus, Ga., from Opelika, Ala., over U.S. Highway 280 to Columbus, Ga., and return over the same route, serving all intermediate points.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that a certificate authorizing such operations should be granted, and that the application in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the act and with our rules and regulations thereunder, within the time specified in the order entered concurrently herein, an appropriate certificate will be issued.

An appropriate order will be entered.

CHAIRMAN BUSH, dissenting in part:

While I agree with the majority that there is no reasonable basis for approving the alternate route au-

thority sought by applicant, the grounds assigned in support of denial thereof, among others, are equally applicable to warrant denial of the application in its entirety. The grant of authority is now predicated upon ". . . a detailed restatement of the evidence . . . of sufficient *length* and *scope* . . ." (emphasis added) to apprise the Court and the parties of the total evidentiary facts which were accorded sufficient "weight" to support the ultimate findings. I have no dispute with the proposition that the fact finding tribunal has exclusive jurisdiction to determine the weight to accord the evidence in the absence of error as a matter of law. Such weight, however, is not to be predicated upon the size of the record, the number of witnesses in favor of or in opposition to the authority sought, the length of time consumed by hearings, briefs and other pleadings or similar other matters, but upon evidentiary facts of record to support a determination that public convenience and necessity requires approval of the proposal. The conclusion herein reached is not, in my view, based upon such facts and thus constitutes error as a matter of law.

Admittedly, the grant of authority will enable this applicant to perform single-line and connecting-line service which has been and is being provided by existing carriers, both singly and collectively, upon a reasonably adequate and similar basis. Transit time and terminal facilities offered by presently authorized motor carriers do not differ substantially from those proposed. However, protestants, more current service exhibits generally reflect more favorable transit times than those exhibited by applicant's supporting witnesses for periods during 1959 and 1960. Applicant's offer to provide additional operating schedules is premised upon the speculative contingency of what

the volume of traffic warrants. On the other hand, many of the protestants have made this a reality, with a corresponding substantial increase in the volume of traffic handled. Under such circumstances, most allegations of protestants' inferior service to applicant's supporting shippers are contrary to fact. Where such did occur, they were exceptions to protestants' customary and lawfully required practices and obligations under the act to provide reasonably adequate service in the movement of less-than-truckload shipments. I would, therefore, deny the application in its entirety.

COMMISSIONER FREAS, dissenting:

I do not agree that the exhibits sponsored by the supporting shippers purporting to show "the over-all pattern of transit-time service existing in the affected areas" were "compiled through the use of valid sampling techniques." Moreover, the quoted statement of a supporting witness "* * * the transit times * * * were not checked *by me when the bill was pulled*" (emphasis supplied) is meaningless. In my opinion a need for service on as broad a basis as is granted has not been established.

Appendix A

Authority sought:

Operations in interstate or foreign commerce as a common carrier by motor vehicle over regular routes transporting general commodities except commodities of unusual value, livestock, household goods, commodities in bulk, and those requiring special equipment, over the following described routes, serving all intermediate points and certain off-route points:

Regular Routes:

Between Jackson, Miss., and Atlanta, Ga.:

From Jackson, Miss., over U.S. Highway 80 to the junction of U.S. Highway 11, thence over U.S. Highway 11 to Birmingham, Ala., thence over U.S. Highway 78 to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highway and all off-route points within 15 miles of Meridian, Miss., Tuscaloosa, Birmingham, and Anniston, Ala., and Atlanta, Ga.

Between Birmingham, Ala., and Atlanta, Ga.:

From Birmingham, Ala., over U.S. Highway 11 to Attalla, Ala., thence over U.S. Highway 411 to junction of U.S. Highway 41, thence over U.S. Highway 41 to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highways and all off-route points within 15 miles of Birmingham and Gadsden, Ala., and Atlanta, Ga.

Between Jackson, Miss., and Atlanta, Ga.:

From Jackson, Miss., over U.S. Highway 80 to Tuskegee, Ala., thence over U.S. Highway 29, to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highways and all-off-route points within 15 miles of Meridian, Miss., Selma, and Montgomery, Ala., and Atlanta, Ga.

Between Tuskegee, Ala., and Atlanta, Ga.:

From Tuskegee, Ala., over U.S. Highway 80 to Columbus, Ga., thence over Alternate U.S. Highway 27 and Georgia Highway 85 to Manchester, Ga., thence over Georgia Highway 85E to Woodbury, Ga.,

thence over Georgia Highway 85 to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highways and all off-route points within 15 miles of Columbus and Atlanta, Ga.

Between Opelika, Ala., and Columbus, Ga.:

From Opelika, Ala., over U.S. Highway 280 to Columbus, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highway and all off-route points within 15 miles of Columbus, Ga.

Also applicant seeks authority to operate over the following alternate routes for operating convenience only;

ALTERNATE ROUTES

Between Birmingham, Ala., and Montgomery, Ala.:

From Birmingham, Ala., over U.S. Highway 31 to Montgomery, Ala., and return over the same route.

Between Birmingham, Ala., and Columbus, Ga.:

From Birmingham, Ala., over U.S. Highway 280 to Columbus, Ga., and return over the same route.

Appendix B

Summary of appendix 21 to exhibit 7, sponsored by applicant, showing transit-time service performed by applicant on 1,745 direct and joint-line movements for representative periods between points on pertinent segments of its presently authorized routes

Appendix 21, sponsored by applicant, (the first 12 pages) is an abstract of representative shipments moving between Dallas, Tex., and Jackson, Miss., dur-

ing the months of April and June, 1960, in applicant's operations. The purpose of these first 12 pages of the exhibit is to show applicant's experience in maintaining its scheduled service performed on traffic moving between Dallas and Jackson, a distance of 411 miles. The distance between Dallas and Jackson is comparable to that between Jackson and Atlanta, Ga. On the 819 shipments moving between Dallas and Jackson for the period reported, as shown in this exhibit, the service is overnight, except that a shipment dispatched on Friday moved over Saturday and Sunday and was delivered on a Monday.

The last 15 pages of appendix 21 also show representative shipments for March 1960, moving between other points on applicant's existing routes, in order to further establish that applicant maintains its present scheduled service (as set forth in appendices 7 and 8 to exhibit 7) over these routes. The service reflected in calendar days is as follows:

(1) *From El Paso to Los Angeles,* the service was second morning on 55 shipments, except where Saturday and Sunday intervened, the service was third morning, with delivery on Monday.

(2) *From Los Angeles to Dallas,* the service was third morning on 151 shipments, regardless of whether or not a Sunday or a Saturday and Sunday intervened; and on 40 shipments where Saturday and Sunday intervened, and delivery was made on Monday morning, the service was fourth morning delivery.

(3) *From Dallas to Tucson,* the service on 52 shipments was second morning; and on 20 shipments, third morning where a Saturday and Sunday intervened and the shipment was delivered on Monday; and fourth morning on 8 shipments, where a Satur-

day and Sunday intervened and delivery was made on Monday.

(4) *From Dallas to Phoenix,* the service on 61 shipments was second morning delivery; and on 24 shipments, where a Sunday or a Saturday and Sunday intervened, and delivery was made on Monday, the service was third morning delivery.

(5) *From Houston to Los Angeles,* the service on 67 shipments was third morning even though a Sunday or a Saturday and Sunday may have intervened, and on 17 shipments, the service was fourth morning where a Saturday and Sunday intervened, and the shipments were delivered on Monday.

(6) *From Los Angeles to El Paso,* on 140 shipments the service was second morning and on 3 shipments the service was third morning. On 8 shipments the service was next day, and on 18 shipments, where a Saturday and Sunday intervened and a shipment was delivered on Monday, the service was third morning.

(7) *From Dallas to Los Angeles,* on 201 shipments the service was third morning whether or not a Sunday or Saturday and Sunday intervened. On 12 shipments, the service was second morning with a Sunday intervening, and on 56 shipments where delivery was made on Monday, and a Saturday and Sunday intervened, the service was fourth morning.

Appendix C

Applicant's average transit time on its segment of joint or multiple-line movements in which it participated, as shown on service exhibits of 40 of the supporting witnesses.

Name of Company	Location	Exhibit No.	Transcript page
Business Equipment Company 1 shipment-1.00 day-Denton (Tex) to Jackson.	Demopilis, Ala.	220	7478
Automotive Paint & Supply Co. 2 shipments 2.00 days Shreveport to Jackson, including Saturdays and Sundays.	Montgomery, Ala.	35, 35-A	2809, 2890
Crawler Parts Co. 2 shipments-1.50 days-New Orleans to Dallas (510 miles).	Montgomery, Ala.	135	2686, 4452
Montgomery Serum Company 2 shipments-1.00 day-Dallas to Jackson, excluding Saturdays and Sundays; 1 shipment-1.00 day-Dallas to Memphis.	Montgomery, Ala.	159	5201
Southeastern Sanitary Supply Company 1 shipment-1.00 day-Baton Rouge to Jackson.	Montgomery, Ala.	176	5628
Nehi Beverage Company 6 shipments-3.66 days-Jackson to Tucson including Saturdays and Sundays.	Tucson, Ariz.	299	7487
United Tent & Supply Company 1 shipment-2.00 days-Houston to Los Angeles, including Saturday and Sunday; 5 shipments-3.40 days-Jackson to Los Angeles, including Saturdays and Sundays.	Los Angeles, Calif.	73	2578
Claxton Saw Company 12 shipments-1.25 days; 11 from Shreveport to Jackson; from Jackson to New Orleans.	Claxton, Ga.	90	2979
Thornton Motor Company 2 shipments-1.00 day-Dallas to Jackson.	Columbus, Ga.	131	4340
Weiss's Department Store 1 shipment-1.00 day-New Orleans to Alexandria.	Alexandria, La.	96	3261, 3337
D. H. Holmes Company 1 shipment-1.00 day-New Orleans to Baton Rouge.	New Orleans and Baton Rouge, La.	213	6454
Dalfde & Hinson 2 shipments-1.00 day-Memphis to Baton Rouge.	Baton Rouge, La.	242	7247
Fact O'Bake Paint Co. 1 shipment-1.00 day-Memphis to Baton Rouge.	Baton Rouge, La.	17	854
Lewis Lawn Mower Sales & Services 6 shipments-1.00 day-New Orleans to Baton Rouge.	Baton Rouge, La.	255	7455
Tucker's Carpets & Rugs 2 shipments-1.00 day-New Orleans to Baton Rouge.	Baton Rouge, La.	170	5448
Clement-Braswell, Inc. 1 shipment-1.00 day-Jackson to Minden.	Minden, La.	21	1199
Dealer Associates, Inc. 1 shipment-1.00 day-Jackson to Minden; 1 shipment-same day-Jackson to Minden.	Minden, La.	175	5587
Holliday's Department Stores 1 shipment-overnight-Jackson to Monroe.	Monroe, La.	162	5308
Holliday's Department Store 11 shipments-overnight-Monroe to Farmersville.	Farmersville, La.	162	5308

Name of Company	Location	Exhibit No.	Transcript page
F. Strauss & Son 1 shipment-1.00 day-Jackson to Monroe.	Monroe, La	279	7472
Haddad Bros. Company 3 shipments-1.00 day-Memphis to Monroe.	Monroe, La	275	7470
Lipper-Stutsman, Inc 1 shipment-1.00 day-Jackson to Shreveport.	Shreveport, La	94	3141
Evans & Sons Clothiers 5 shipments-1.00 day-Memphis to West Monroe.	West Monroe, La	184	5867
Mississippi Plastics Division of Brookpark, Inc 7 shipments-overnight-Port Gibson to Memphis.	Port Gibson, Miss	23	1269
Capital Towel & Linen Supply Company 5 shipments-2.00 days-Jackson to Oklahoma City.	Oklahoma City, Okla	291	7482
R. C. Cola Bottling Company 28 shipments-2.42 days-Jackson to Tulsa, including Saturdays and Sundays.	Tulsa, Okla	24	1266
Royal Crown Bottling Co 7 shipments-overnight-Jackson to Dallas, excluding Saturdays and Sundays.	Abilene, Tex	88	2924
Breneman-Hartshorn, Incorporated 12 shipments-1.25 days-Jackson to Dallas, excluding Saturdays and Sundays.	Dallas, Tex	26	1359, 1419
H. W. Baker Linen Company 13 shipments-2.00 days-Memphis to Dallas (552 miles); 1 shipment-1.00 day-Memphis to Dallas.	Dallas, Tex	95	3214
El Paso Towel Supply Company 1 shipment-4.00 days-Jackson to El Paso, including Saturday and Sunday; 1 shipment-3.00 days-Memphis to El Paso, including Saturday and Sunday.	El Paso, Tex	34	1675
Feiner's Men's Toggery 2 shipments-3.00 days-Jackson to El Paso, including Saturdays and Sundays.	El Paso, Tex	183	5848
Rainshine Top & Supply Company 3 shipments-2.33 days-Jackson to El Paso; 1 shipment-2.00 days-New Orleans to El Paso.	El Paso, Tex	44	2171
Tom's Toasted Peanuts 13 shipments-2.00 days-Jackson to El Paso, excluding Saturdays and Sundays; 14 shipments-3.00 days-Jackson to El Paso, including Saturdays and Sundays.	El Paso, Tex	101	3488
Triangle Supply Co., Inc 1 shipment-2.00 days-Jackson to El Paso.	El Paso, Tex	109	3744
Cooke Supply Company 1 shipment-1.00 day-Memphis to Fort Worth.	Fort Worth, Tex	119	3997
S. Herzfeld Sportswear Mfg. Co 4 shipments-1.00 day-Jackson to Fort Worth.	Fort Worth, Tex	43	2140
Leonard's Department Store 3 shipments-1.66 days-Jackson to Fort Worth, including 1 Saturday; 1 shipment-2.00 days-Memphis to Fort Worth (580 miles).	Fort Worth, Tex	40	1990
Lind Paper Company 3 shipments-1.00 day-Jackson to Fort Worth; 1 shipment-2.00 days-Jackson to Fort Worth, including 1 Sunday.	Fort Worth, Tex	172, 172-A	5525, 5695
Royal Crown Bottling Company of Fort Worth and Lubbock. 45 shipments-1.11 days-Jackson to Fort Worth, excluding Saturdays and Sundays.	Fort Worth, Tex., Lubbock, Tex.	117	3966
Southwest Wholesale Furniture 1 shipment-3.00 days-New Orleans to Fort Worth, including Saturdays and Sunday.	Fort Worth, Tex	233	7461
TOTAL: 247 shipments			

Appendix D

CHART SHOWING COMPARISON IN GROWTH OF POPULATION OF COUNTIES IN WHICH PRINCIPAL POINTS ON PROPOSED AND PRESENT ROUTES OF APPLICANT ARE LOCATED

County	City	1960	Percent of increase	1950	Percent of increase	1940
Alabama						
Calhoun	Anniston	95,878	20.5	79,539	25.6	63,319
Dallas	Selma	56,667	0.7	56,270	1.9	55,245
Etowah	Gadsden	98,980	3.3	93,892	29.4	72,580
Jefferson	Birmingham	634,864	13.6	558,928	21.5	459,930
Lee	Opelika & Auburn	49,754	10.4	45,073	23.6	36,455
Marengo	Demopolis	27,098	8.1	29,494	17.5	35,736
Montgomery	Montgomery	169,210	21.8	138,965	21.5	114,420
Russell	Phenix City	46,351	14.8	40,364	12.8	35,775
Tuscaloosa	Tuscaloosa	109,047	15.9	94,092	23.7	76,036
	Total	1,284,849	.....	1,136,617	.....	919,496
Arizona						
Maricopa	Phoenix	663,510	100.0	331,770	78.2	186,193
Pima	Tucson	265,660	88.1	141,216	93.9	72,838
Yuma	Yuma	46,235	65.1	28,008	44.9	19,326
	Total	975,405	.....	500,992	.....	278,357
California						
Los Angeles	Los Angeles	6,038,771	45.5	4,151,687	49.0	2,785,643
Orange	Area	703,925	225.6	216,224	65.4	130,760
	Total	6,742,696	.....	4,367,911	.....	2,916,403
Georgia						
Cobb	Marietta	114,174	84.7	61,830	61.6	38,272
DeKalb	Atlanta	256,782	88.3	136,395	56.9	86,942
Fulton	Atlanta	556,326	17.5	473,572	20.5	392,886
Floyd	Rome	69,130	9.9	62,899	12.0	56,141
Muscogee	Columbus	168,623	34.4	118,028	56.3	75,494
Troup	LaGrange	47,189	−5.3	49,841	13.6	43,879
	Total	1,202,224	.....	902,565	.....	693,614

CHART SHOWING COMPARISON IN GROWTH OF POPULATION OF COUNTIES IN WHICH PRINCIPAL POINTS ON PROPOSED AND PRESENT ROUTES OF APPLICANT ARE LOCATED—Continued

County	City	1960	Percent of increase	1950	Percent of increase	1940
Louisiana (Parishes)						
Caddo	(Shreveport	223,859	26.8	176,547	17.5	150,203
	(Bossier City					
East Baton Rouge	(Baton Rouge	230,058	45.4	158,236	70.0	93,415
West Baton Rouge	(	14,796	26.1	11,738	4.2	11,263
Jefferson	(New Orleans	208,769	101.0	103,873	106.0	50,427
Orleans	(	627,525	10.0	570,445	15.3	494,537
Lincoln	Ruston	28,535	10.7	25,782	4.0	24,790
Ouachita	Monroe	101,663	36.1	74,713	26.3	59,168
Rapides	Alexandria	111,351	22.8	90,648	23.5	73,370
Webster	Minden	39,701	11.2	35,704	6.0	33,676
	Total	1,586,257		1,247,686		985,849
Mississippi						
Adams	Natchez	37,730	17.0	32,256	18.4	27,235
Hinds	Jackson	187,045	31.6	142,164	32.5	107,273
Lauderdale	Meridian	67,119	4.6	64,171	10.2	58,247
Warren	Vicksburg	42,206	6.5	39,616	0.1	39,595
	Total	334,100		278,207		232,353
Oklahoma						
Oklahoma	Oklahoma City	439,506	51.3	325,352	33.3	244,159
Tulsa	Tulsa	346,038	48.5	251,686	30.2	193,363
	Total	785,544		577,038		437,522
Tennessee						
Shelby	Memphis	627,019	34.0	482,393	34.7	358,250
Texas						
Bexar	San Antonio	687,151	37.3	500,460	48.0	338,176
Brazos	Bryan	44,895	16.9	38,390	42.3	26,977
Dallas	Dallas	951,527	54.8	614,799	54.3	398,544
Denton	Denton	47,432	14.7	41,365	22.9	33,658
Ector	Odessa	90,995	116.1	42,102	179.7	15,051
El Paso	El Paso	314,070	61.1	194,968	48.8	131,067
Harris	Houston	1,243,158	54.1	806,701	52.5	528,961
Howard	Big Spring	40,139	50.2	26,722	27.3	20,960
McLennan	Waco	150,091	15.3	130,194	27.8	101,898
Reeves	Pecos	17,644	50.2	11,745	46.7	8,006
Tarrant	Fort Worth	538,495	49.1	361,253	60.2	225,521
Taylor	Abilene	101,078	59.5	63,370	43.5	44,147
Midland	Midland	67,717	162.6	25,785	120.0	11,721
	Total	4,294,392		2,857,854		1,884,737

*Source—1961 Rand-McNally Road Atlas. U.S. Bureau of Census, U.S. Census of Population—1940, 1950, and 1960.

Appendix E

ALPHABETICAL LIST BY STATE AND CITY OF THE CITIES IN WHICH SUPPORTING SHIPPERS AND RECEIVERS ARE LOCATED, THE NUMBER OF INDUSTRIES AND BUSINESSES REPRESENTED AT SUCH POINTS, AND THE POPULATION OF SUCH POINTS DURING THE COURSE OF THE HEARING HEREIN

Name of city or town	No. of businesses or industries represented	Population
Alabama	56	
Auburn	2	16,261
Birmingham	23	340,887
Demopolis	1	7,337
Montgomery	18	134,393
Opelika	2	15,678
Selma	1	28,385
Tuscaloosa	2	63,370
Tuskegee	3	1,750
York	4	2,932
Arizona	9	
Phoenix	2	439,17[illegible]
Tucson	7	212,892
California	13	
Los Angeles area	13	3,041,940
Georgia	32	
Atlanta	17	487,445
(Cedartown)	1	9,340
(Clanton)	1	2,672
Columbus	5	116,779
(Dalton)	2	17,868
Rome	3	32,226
(Swainsboro)	1	5,943
(Thomson)	1	4,522
Ville Rica	1	3,450
Louisiana	89	
Alexandria	7	40,279
Baton Rouge	23	152,419
Coushatta	1	1,668
Farmerville	1	2,727
Marksville	1	4,257
Minden	4	12,785
Monroe	15	52,219
New Orleans	1[illegible]	627,525
New Roads	1	3,965
Ringgold	1	953
Ruston	6	13,991
Shreveport (1 withdrawn)	21	164,372
Springhill	1	6,437
West Monroe	6	15,215

See footnotes at the end of chart

ALPHABETICAL LIST BY STATE AND CITY OF THE CITIES IN WHICH SUPPORTING SHIPPERS AND RECEIVERS ARE LOCATED, THE NUMBER OF INDUSTRIES AND BUSINESSES REPRESENTED AT SUCH POINTS, AND THE POPULATION OF SUCH POINTS DURING THE COURSE OF THE HEARING HEREIN—Con.

Name of city or town	No. of businesses or industries represented	Population [1]
Mississippi	38	
Canton	1	9,707
Jackson	9	144,422
Meridian	2	49,374
Natchez	16	23,791
Newton	3	3,178
Port Gibson	2	2,861
Vicksburg	4	29,130
Winona	1	4,282
Oklahoma	11	
Oklahoma City	3	324,253
Tulsa	8	14,282
Texas	63	
Abilene	4	90,368
Dallas	17	679,684
El Paso	14	276,687
Fort Worth	15	356,268
(Lubbock)	1	128,961
Midland	2	62,625
Odessa	5	80,338
Waco	5	97,808
Grand total	311	.....

Note: The italicized points are *all located on the proposed extension routes*. All other points are on applicant's presently authorized routes, except those in parentheses.

[1] Populations are taken from the 1961 edition of *Rand McNally Road Atlas*.

Appendix F

SUMMARY OF SUPPORTING SHIPPER AND RECEIVER EVIDENCE[1]

Ace Neon Sign Company, Birmingham, Ala., receives several shipments monthly from Oklahoma City, Okla., Houston and Dallas, Tex., and Atlanta, Ga. Shipments from Dallas, all of which are special orders, are handled generally by Transcon, but this service is considered unsatisfactory because of slow transit times, such as 5.57 days, afforded on Dallas-originated shipments. Delays experienced in receiving shipments prevent control of limited inventory. Consignee needs 48-hour service. Expeditious and reliable motor service, such as here proposed, would help consignee to increase its business out of Dallas by 10 percent.

Miller Wire Works, Birmingham, Ala., ships two to three shipments per week, weighing 7,000 to 8,000 pounds, to such points as Jackson, Miss., Shreveport, La., Houston, Fort Worth, Abilene, and El Paso, Tex., and to some points in New Mexico. Especially concerned about prompt service on shipments to El Paso and to points along applicant's present routes between Dallas-Fort Worth and El Paso. Has utilized a number of named protestant carriers' interline services, but such services have not been satisfactory generally to meet witnesses' needs because of slow times-in-transit to which its shipments have been subjected. *Complaints have been made to Ryder and Campbell 66 about slow service, and, in turn, have*

[1] The testimony of supporting witnesses representing 68 separate business entities was stipulated as being representative of the evidence adduced by those parties actually testifying in support, and is not included in the summary herein.

been received from customers at some Texas points. Time element highly important. Has tried to better its service by changing the carriers utilized with no improvement in service experienced thereafter.

Thompson Fabricating Company, within Birmingham commercial zone, makes five to six shipments per month to such points as Abilene, Austin, Waco, and Odessa, Tex., Beall Air Force Base, Calif., and Atlanta and Augusta, Ga. Shipments range from 100 pounds to a truckload. Campbell 66 has been originating carrier, and its service is unsatisfactory. For example, one shipment to Abilene took 11 days by this carrier. *Several customer complaints about this carrier's service have been received.* Another shipment to Austin was lost in transit, and difficulty was had in tracing the shipment which finally was located in possession of Sunset Motor Lines in El Paso. Campbell 66 interchanged this shipment with Strickland at Memphis. These shipments described above all were destined to a named customer. *This customer has been lost,* and company not invited to bid on any more projects. Encountered difficulties on shipments to Atlanta. Baggett refused to *pick up* a truck load the day called because no flat or rag-top trailer available. No carrier has solicited or offered service on shipments to West Texas.

McQueen Foundry & Supply Company, Birmingham, Ala., ships to Texas, Oklahoma, and New Mexico, as well as to other States. Witness stated existing service out of Birmingham not sufficient to permit him to *compete* with other suppliers in the northern part of the country. Had bad experience on shipments to Amarillo, *lost business because of delays.* Trouble also had in connection with shipments to contractors in Houston, Columbus and San Antonio, Tex. Worst trouble *with less-than-truckload shipments to Texas.*

Company does not desire to use its own equipment but has been compelled to do so in some cases—uses own truck when he has return haul. Considers that proposed service would substantially increase company's business into Texas and Oklahoma markets, and will also be used in preference to company's own equipment. Transit time highly important because of penalty clauses, if timed deliveries not met, in contractors' contract work. Fifty percent of shipments to Texas and Oklahoma go to particular job, and not put in warehouse.

Thomas Foundries, Inc., Birmingham, Ala., ships to Los Angeles and West Coast, also ships to Houston, Tex., Jackson, Miss., New Orleans, Baton Rouge and Monroe, La. Shipments to West Coast unsatisfactory on account of interchange delays experienced in utilizing motor carrier service, so that company has resorted to air freight which is too expensive. Transcon has furnished inadequate equipment on occasion. Transit time highly important because in furnishing wearing parts breakdowns are experienced involving expensive equipment. About 50 percent of shipments are emergency. If proposed service is available could increase business done in California. Shipments vary from 100 to 28,000 pounds. Ninety percent of traffic is less-than-truckload.

Southern Sash of Montgomery, Inc., Montgomery, Ala., ships to Atlanta and to such other points as Los Angeles, Houston, and New Orleans. Has about five shipments per month weighing from 200 to 3,000 pounds. Leaves routing to shipper, but could request other routing. Most shipments, however, are inbound from Los Angeles, Houston, and New Orleans. Has used three-line haul from Houston to Montgomery. Has tried different routings from Los Angeles, such

as T.I.M.E.-Cole to Montgomery, and applicant (to Jackson)-Dixie (to Montgomery), but has not found adequate routing because shipments are too long in transit. Shipments routed through the Memphis gateway often are afforded 10-days transit time, for example. Transit time also has been excessive on shipments routed through the Jackson gateway. Time in transit highly important because full run of sizes cannot be carried in stock, are made on special order, and customer wants them promptly. On account of time-in-transit service presently experienced, company is unable to discount its invoices as received within 10-days discount period. In undertaking to trace shipments, company found routing not followed, and information could not be obtained. Tracing experience with Jack Cole, Dixie, and A-NO has not been satisfactory. Shipments are susceptible to damage by transfer of lading through excessive handling in transit. Company has experienced loss and damage to freight and difficulty with payment of damage claims, particularly in utilizing service of A-NO. No satisfactory service has been found, and company needs proposed service. *There have been occasions when materials have been ordered by customers, then cancelled and purchased elsewhere.* If needed service was available, sales and tonnage could be increased.

Eimco Corporation, Birmingham, Ala., receives shipments inbound, for stock and emergency purposes, primarily from Salt Lake City, Utah, and also from pertinent Texas points and from New Orleans. Outbound shipments are made every day to points in Texas and Oklahoma, with an average weight of 200 pounds. Transit time is highly important because shipments generally consist of repair parts used in connection with government contract work, road building,

and industrial plant operations that require timed deliveries to prevent plant shutdowns. Applicant's proposed service, affording prompt and reliable scheduled service is desired by shipper. Witness sponsored exhibit No. 12, showing 27 representative shipments covering a 12 month period. This exhibit depicts an average transit time of over 4 days on shipments from Dallas handled by Transcon. Company also has experienced difficulty in tracing shipments. Two, three, and sometimes four shipments per week originate in Dallas, *and complaints have been made to the carriers utilized, both on inbound and outbound shipments, with no improvement in service.*

Nelson Company, Montgomery, Ala., makes shipments to points in Texas, New Mexico, Arizona, and California. Shipments to Texas points have been to Dallas, Fort Worth, Waco, Huntsville, Houston and Abilene; to Louisiana, to such points as Monroe, Alexandria, Baton Rouge, Shreveport, and Springhill. *Lost customer at Springhill, because of poor service.* Service has not been satisfactory to meet witnesses' needs, resulting in customers purchasing elsewhere. *Complaints have been made to Dixie locally.* Transit time is important. Has experienced difficulty on shipments from Montgomery to Columbus, Georgia. Claim service is slow because Dixie sends claims to connecting carriers to worry about. Needs and would use proposed service if made available. Also business could be doubled in the Texas-Louisiana area if service was improved.

Smith Textile Company, Jackson, Miss., receives shipments from the Carolinas, Georgia, and Virginia. It receives a great many shipments from Atlanta, as well as from Rome and Calhoun, Ga. Atlanta is a gateway on shipments from the Carolinas and Virginia. Shipments are received daily. Witness spon-

sored exhibit No. 13 showing excessive and inconsistent transit times afforded on 72 representative shipments for first 9 months of 1960. For example, on service by Dixie from Atlanta and Birmingham, the average transit times afforded on shipments listed in this exhibit were 4.50 days and 3.20 days, respectively. Shipments range in weight from 46 to 1,500 pounds. Dixie and numerous other carriers have been used on shipments from Atlanta as well as those passing through Atlanta. Transit time is important to maintain inventory control. Witness stated the proposed overnight service from both Atlanta and Birmingham to Jackson is needed. Used Atlanta as a secondary market. *Attempts have been made to improve the service by calling the transportation companies and asking them to improve it, and complaints have been made to the carriers, but these have produced no results.* Witness also concerned with adequate delivery service. On numerous shipments, when traced, the shipments were found in Jackson on trailers which had not been unloaded and delivered. Shipments are made outbound all over the south, many going to points on the present Braswell System. Applicant handles westbound shipments and such service considered quite adequate.

Anderson Electric Corporation, Birmingham, Ala., makes shipments from Birmingham and Leeds, Ala., Leeds being in the Birmingham commercial zone, to Dallas, Houston and El Paso, Tex., Los Angeles, Calif., Phoenix and Tucson, Ariz. In fact, every city or municipality that has a utility is a potential customer. Shipments to Texas points move practically every day, to Arizona about every 2 weeks, and the same to Los Angeles. Witness routes most shipments. Witness interested primarily in service from Birmingham to Texas and points west thereof. Time in transit is very important and the company needs applicant's

proposed service, because the business is highly competitive and time in transit is of the essence. Has experienced lost and damaged shipments moving into the Los Angeles area. *Customers in Dallas and Houston lost because of slow transportation service.* Ryder handles some shipments, and sometimes moves them through the Memphis gateway, and sometimes through the Shreveport gateway. Chief competitors are located in St. Louis and also in California. Witness believes the proposed service would enable his company to meet this competition. St. Louis has a number of single-carriers to Texas points and into California and Arizona points. There is no single-line carrier service from Birmingham to Arizona and California points, nor to Texas points other than to Fort Worth, Dallas, Beaumont, and Houston. If the proposed service were available, witness believes business could be increased in Texas and Arizona each by 25 percent (representing $200,000 a year in Texas, $50,000 a year in Arizona) and in California by 60 percent. Consideration has been given to using the company's own trucks in order to cut down transit time on shipments to Texas and for economical reasons. Universal Carloading is used when possible, but has not been satisfactory to meet need, time in transit being too long under such forwarding arrangements. The witness was not familiar with the services of Transcon and T.I.M.E. to the Arizona points and Los Angeles.

Miller Foundry Company, Birmingham, Ala., has shipments to Oklahoma City, Tulsa, and Norman, Okla., New Orleans, and Atlanta, Ga., Baton Rouge, Lake Charles, La., and Jackson, Miss. The witness usually called Jack Cole Company for routing and was advised to use Jones Truck Line to Memphis. Has used Ryder to Baton Rouge and to Jackson. Has

no complaints on service with any of the movements described.

Allegheny-Ludlum Steel Company, Birmingham, Ala., principally interested in shipments to Louisiana points, such as Baton Rouge, New Orleans, Landis, Minden, Ruston and Shreveport, but was also interested in shipments to Vicksburg, Winona and Jackson, Miss. The company has been using Dixie, Ryder, Hoover, and Campbell 66. These transportation services have not enabled the company to effectively compete with other producers in the Louisiana area. Has competitors in New Orleans, Memphis, and Houston, and shipments to such points as those mentioned have been unsatisfactory because not fast enough. Faster service would put the company in a better competitive position with its competitors at the points named. Its business in Louisiana and Mississippi could be increased, and especially by being able to *regain customers which it has lost, such as two customers in particular* where the volume of one was $12,000 and of another was $10,000 per year. There is about $300,000 worth of business in Louisiana, and the witness believed that this company would be able to obtain 25 percent to 30 percent of that business if the proposed service was available.

Simon & Mogilner, Birmingham, Ala., has some 10 to 20 shipments per week to Louisiana; 100 per week to Texas, 20 to 25 per week to Arizona, a few to Salt Lake City, and from 120 to 125 shipments per week to Los Angeles. Shipments range from 60 to 200 pounds each. Approximately 500,000 to 600,000 pounds per year are shipped to California. California shipments have moved by Transcon and several of the freight forwarders. Service on such shipments has not been satisfactory because of slow delivery. *Numerous complaints have been received from California customers*

and an effort has been made to improve that service. Fifth-morning service to California is needed. Service on shipments to Oklahoma points, such as Tulsa, Oklahoma City, Ardmore, and Norman has not been satisfactory also because it is too slow. *This shipper has used Transcon and Ryder on shipments to Texas points, and has made frequent complaints to those carriers about the service.* Trouble has been encountered on shipments requiring delivery by specified dates. Witness had difficulty on a shipment to San Luis Obispo which moved by Western Carloading and could not be found, requiring duplication of the shipment by air freight, which cost over $2,000. Witness stated company's business could be increased in Louisiana, Texas, New Mexico, Arizona, and especially California points, if applicant's proposed service was made available. This increase would come from *regaining lost customers,* as well as by obtaining new accounts. California business, which presently runs from $400,000 to $500,000 per year could be increased by 20 percent, Texas business, which approximates $400,000 yearly, could be increased 25 percent, and Louisiana business, which runs approximately $200,000 yearly, could be increased some 20 percent. The company has competitors in California as well as Fort Worth, Dallas and San Antonio, Tex., and if better service was available, the company would be in a better competitive position.

Gold Bond Stamp Company, Monroe, La., deals in freight which is subject to damage by excessive handling, and has experienced damage and loss on shipments. Shipments from Atlanta twice a week range from 700 to 1,000 pounds each. Presently uses Bowman and Burks. Sponsored exhibit 15 showing 7 representative shipments received from Atlanta, via

Memphis gateway, and afforded an average transit time of 4.43 days. Service unsatisfactory because too slow, not delivered on proper date, and never know when shipments will arrive. Transit time very important. *Complaint has been made to Bowman and Burks, but service has not improved.* Open to receive shipments 6 days a week during normal business hours. Proposed service would be convenient and be used. When business started, investigation was made of motor carrier service, and Bowman and Burks were selected as being "probably best choice." For that reason, although the witness knew of various other carriers and their services, they had not been used.

House of Carpets, Midland, Tex., receives shipments on average of one shipment per day from various points in North and South Carolina, as well as Dalton, Ellijay, Chamblee, Calhoun, Rome and Cartersville, Ga. Shipments range from 150 to 800 pounds. In the past has used rail service as well as Ryder, Transcon and T.I.M.E. Various carriers used in effort to get better and more consistent service. Transit time important to make deliveries and to fill contract jobs. Sponsored exhibit 16 showing all of its (106) shipments (48 by rail, the remainder by motor carrier) between December 1959 and October 1960, which were subjected to transit times ranging between 3 and 10 days, and averaging approximately 8.50 days. A large number of carriers and combinations have been used. Service unsatisfactory, takes too long. Proposed service needed. *Complaints have been made to various carriers, but no improvement in service.* Consistency of service important for inventory control. Open for delivery 6 days a week. Difficulty in getting shipments delivered to Midland because held on docks of carriers at Odessa. Because of existing service, *loses about one*

sale per week, which would amount to approximately $400 a sale. Delivering carriers at Midland other than Braswell would be Merchants Fast Motor Lines, Sunset Motor Lines, Curry Truck Line, and the T & P.

Fact-O'Bake Paint Shop, Baton Rouge, La., receives shipments from Atlanta monthly or more often ranging in weight from 500 to 7,000 pounds. Witness sponsored exhibit 17 consisting of six representative shipments from July through October 1960 afforded transit times ranging from 5 to 12 days. This service on shipments from Atlanta not satisfactory because no consistency in delivery time, and transit time too long. Various combinations of carriers used (e.g. Dixie-Huff, A-NO-England, Dixie-Herrin, Transcon-applicant) but what is needed between Atlanta and Baton Rouge is 3 days service. *Complaint made to Ryder concerning slow delivery service.*

Swenson-Clyburn Contract Supply, Baton Rouge, La., receives four to ten shipments a month from Atlanta and Calhoun, Ga., ranging from 25 pounds to 2,000 pounds. Has used A-NO, Ryder, Huff and Garig. Transit time important to meet customer deadlines. Shipper's exhibit 18 showed six representative bills from December 1959 to October 1960. Transit time not satisfactory to witness, as shown on this exhibit (average transit time: 6.50 days) by such carriers as A-NO-Huff, Dixie-Huff, Ryder, etc. Shipments should be received in 3 days out of Atlanta, particularly less-than-truckload shipments. *Complaints have been made to the carriers that have been used but no improvement.* Believes business could be increased by at least 10 percent if proposed service by applicant from Atlanta was available. Has no objection to interchange service if it is good. Has not tried every possible carrier interchange service.

Welders Supply Company, Baton Rouge, La., receives from two to three shipments a month from Atlanta, and prefers to purchase at this point rather than other sources of supply because of lower prices. Witness sponsored exhibit 19 covering 11 representative shipments for period from January to June 1960, and reflecting transit times averaging 6 to 8 days. The interline service received from A-NO-Garig, Couch, and Huff is not satisfactory. *Complaints have been made to the shipper because it was felt shipper should know the best routing without success. Has experienced difficulty in getting DELIVERY OF SHIPMENTS AFTER THEY ARRIVE IN Baton Rouge,* so the delivering carriers have been requested to leave the shipments on their dock where they may be picked up. Has used air freight on occasion because of slow transit time of motor carriers. Air freight is too expensive. Witness has not utilized every possible service now available. Shipper handles routing and tracing of shipments.

Bes-Pak Company, Montgomery, Ala., makes shipments to Los Angeles, North Ridge, and San Diego, Calif., Phoenix, Ariz., and Houston and Dallas, Tex. From March to September each year, one shipment per week ranging from 300 to 400 pounds is made to each of the points named. Time in transit is important in connection with this seasonable business. Dixie handles most shipments from Montgomery; however, Roadway, Jack Cole, and Baggett are also used. Service received has not been satisfactory. It takes too long to get to destination. Commodity sold is highly competitive. Needs fourth morning service to California if it is to remain in the competitive market. Fourth morning to Phoenix would be satisfactory and is needed. Second morning to Dallas is needed and would eliminate

necessity of maintaining a warehouse inventory at Dallas. Shipments are susceptible to damage from handling in transit, and if damaged are unsalable. If better service available to points in the west, company could increase its business. *Has complained to Dixie on several occasions to try to improve service, but no improvement experienced.*

Alaga Syrup Company and W. W. Pickle Company, Montgomery, Ala. Witness was traffic manager for both companies. Both companies make shipments to Ruston, Minden, Shreveport, and Monroe, La., Los Angeles and San Francisco, Calif.; Dallas, Fort Worth, Houston, and San Antonio and El Paso, Tex.; Phoenix, Ariz.; Portland, Oreg., and Seattle, Wash. Ships to their own warehouses and to wholesale grocery warehouses mostly by rail in carload lots. Distributes out of own warehouses in company-owned trucks. Also receives bottles from Oklahoma City, Okla., and Jackson, Miss. Witness stated they would continue to use their own trucks. Witness had not used all of the available motor services.

Montgomery Fair Company, Montgomery, Ala., is a retail department store. Shipments are routed by numerous carriers into Montgomery by use of a routing guide. Shipments are received from California and Texas, and from Atlanta, Calhoun, La Grange, Columbus, and Rome, Ga., and points in Louisiana and Mississippi. Exhibit 20 sponsored by this witness, covers 50 representative shipments for the period July, August and September, 1960, depicting average times in transit ranging from 2 to 7 days on shipments originating at points on the proposed routes, to 8–11 days on West coast-originated shipments. Inbound freight is subject to damage by excessive handling in transit. Time in transit is important to accommodate promotional sales.

American Paper Tube Company, Port Gibson, Miss., makes shipments to Opelika, Langdale and Lanett, Ala., West Point and La Grange, Ga., and to other points in North and South Carolina, Georgia and Alabama. Shipments are made daily ranging from 200 to 300 pounds. Time in transit is important because a day lost in transit is a costly thing to the customer. *Complaints have been received from nearly all customers about the transportation service.* Service has not been satisfactory because of long delays experienced in utilizing joint-line services of Dixie, Delta, Ryder, Overnite, and Johnson. Four specific examples of such delays experienced in August and September 1960, were cited as representative. Has experienced some improvement since began using applicant as originating carrier, and since changing from Delta. He knew of Deaton Truck Lines, but considers that Deaton is not interested in his traffic, being interested only in truckload shipments.

Clement-Braswell, Inc., Minden, La., receives shipments from Montgomery and Gadsden, Ala. Sponsored exhibit 21, showing eight (all of the) shipments covering a period of 12 months and reflecting transit times ranging from 3 to 8.75 days. Most materials shipped are emergency in nature, consisting of replacement parts on equipment that is broken down, and the customer needs the trailer back in operation. The witness has specified Dixie-Braswell routing, yet the shipments come in by Couch from Montgomery. Four of the eight shipments shown on exhibit 21 were routed Braswell, but Dixie gave them to Couch. Has tried to find better routings out of Montgomery in order to get better service, but has been unable to do so. Company is interested in having at least a second morning service from both Gadsden and Montgomery.

Pays more for products purchased in Dallas than when purchased in the Alabama area.

Royal Crown Bottling Company, Baton Rouge, La., receives shipments from Columbus, Ga., at least twice a month. Shipments moved some by Dixie to New Orleans, and Huff to Baton Rouge. Dixie is the only carrier out of Columbus to New Orleans, and there is no direct service to Baton Rouge. Time in transit is important. Witness sponsored exhibit 22 showing eight representative bills from August 1959 to October 1960, depicting an average transit time of 5.40 days on six of these shipments. On the other two, the transit time shown is from New Orleans only, as 1.50 days. The present service is not satisfactory. By reason of slow transit-time service, shipper has been inconvenienced and forced to borrow syrup from New Orleans because of delays in transit. This is both undesirable and expensive. Witness has not utilized all the present interchange service available because excessive handling in its products in transit causes breakage.

Mississippi Plastics Division of Brookpark, Inc., Port Gibson, Miss., interested primarily with the best available routings on shipments into Virginia, Philadelphia, New York and Boston because customers have been complaining to the home office. Sponsored exhibit 23 showing 35 representative shipments from Port Gibson to such points as Boston, New York, Philadelphia, Newark, and Norfolk. All shipments were originated by applicant at Port Gibson and handled by applicant in overnight or same day service to Memphis, but the delivering carriers' service from Memphis to destination involved from 5 to 12 days transit time. Shipper would desire applicant's proposed service from Port Gibson to Atlanta as the more direct gateway in order to connect with such

carriers there as Mason & Dixon or Roadway for movement beyond.

R. C. Cola Bottling Company, Tulsa, Okla., receives shipments weekly and sometimes more often from Columbus and Atlanta, Ga., and from the Carolinas. Such shipments average 600 to 700 pounds each. Sponsored exhibit 24 showing all (47) shipments covering the period March through October, 1960, subjected to transit times averaging 5.32 days in the case of shipments originating at Atlanta and Columbus. Two rail shipments from Atlanta took an average of 15 days in transit. Witness stated transit time is important and a regular and consistent service is needed. The service experienced, such as shown by exhibit 24, is unsatisfactory. Leaves routing to shipper, although has right to route, honored by shipper.

Bartlett-Collins Company, Sapulpa (Tulsa), Okla., makes shipments daily to Georgia, Alabama, North and South Carolina. Some of the points where shipments made are Atlanta, Columbus and Macon, Ga., Dothan, Montgomery and Birmingham, Ala., and points through Atlanta gateway to Virginia and the Carolinas. Presently using B & B Lines as originating carrier in connection with T.I.M.E. and Transcon. Service unsatisfactory because too many carriers involved, requiring three-line service to most points. Transit time is important because of fast turnover of stock. *Complaints have been received from customers about motor carrier service to Alabama and Georgia points.* Has two direct lines to Atlanta and one to Birmingham, none to other points. Carriers with circuitous routes cannot be used. Has used applicant to Mississippi and Louisiana points not here involved and found such service to be reliable and dependable.

Breneman-Hartshorn, Incorporated, Dallas, Tex., receives shipments from Atlanta twice a week, weighing

2,000 pounds or more. Sponsored exhibit 26 showing 17 representative shipments covering period from January 1959 to August 1960, and showing total average transit time of 4.65 days, as handled by Dixie-Braswell, and other combinations. On applicant's portion of these movements, expeditious time-in-transit was afforded from Jackson to Dallas. Service from Atlanta too slow and, thus, unsatisfactory because of limited inventory. For a time, in June, 1960, shipments had a routing of Dixie in combination with applicant but this was changed without authorization. *Complaints were made to Dixie about this.* Dixie advised in response to a letter that it would honor routing, but Dixie has not done so. Company-owned trucks bring shipments from Oswego, New York to Atlanta, Ga.

T. W. Williamson, Incorporated, Tulsa, Okla., makes shipments into Georgia and Alabama points, some of which are Rome, Columbus, Acworth, Atlanta, Bremen, Fayetteville, La Grange and Marietta, Ga., and Anniston, Birmingham and Selma, Ala., and also to Meridian, Miss. Shipments are made from one a day to 25 a week. Transcon and T.I.M.E. have been used both directly and in interline as required. Transit time is important because in oilfield business everything is wanted yesterday. Service proposed by applicant is needed and would be used.

Texlite, Incorporated, a division of Republic Appliance, Dallas, Tex., makes shipments to Birmingham, Gadsden and Montgomery, Ala., Atlanta, and Columbus, Ga., and other points. Average of one shipment a day is made to one or more of the points. Carriers most frequently used have been East Texas and Strickland through the Memphis gateway. Time in transit is important. Shipments susceptible to damage in transit, and therefore, interline service is objectionable. Appli-

cant's proposed service would be convenient, and would be used. Other than carriers named out of Dallas, shipper has also used Herrin and Red Ball. Routing beyond interchange points is left to the originating carrier. Shipper was told by Transcon that shipments from Dallas to Atlanta would be handled through Oklahoma City Gateway which is too circuitous a routing in shipper's opinion.

American Handicrafts Company, Atlanta, Ga., receives shipments on an average of three times a week, depending on the time of year, from Fort Worth, ranging in weight from 200 to 2,000 pounds. Has used various originating carriers at Fort Worth, for interline with Dixie, Transcon, and others. Witness sponsored exhibit 27 listing bills covering period from September 1959 through October 1960, and reflecting average transit times ranging from 4 to 8 days. *Shipments handled by Transcon always late. Complaints have been made to the carriers used, especially to Transcon, but no improvement in service, especially in connection with local delivery and time-in-transit, service afforded.* Applicant's proposed service would be convenient, and would be used. Has discontinued use of Transcon and was specifying Roadway, which he knew to be a new service, but as yet has tendered no shipments to Roadway.

Akin Distributors, Inc., Tulsa, Okla., distributes special foods for between 160 and 180 different manufacturers, with 14,000 different items. Attempts to ship into territory involved in this application, and does to limited degree, having made shipments to Atlanta and Gadsden, Ga., and to Montgomery and Birmingham, Ala., as well as to several smaller points. Transcon and Campbell 66 have been used. Shipments are made two or three times a week and range from 300 to 400 pounds. Transit time is important because

these foods are highly perishable. *Complaints have been received from customers about the transportation service in the involved areas.* The difficulty is that shipments are too long in transit. *This company loses a large percentage of business to competitors in the east because of the transportation service out of Tulsa.* The proposed service would open up new available markets, and the company's business could be increased. *Complaints have been made to the carriers over the last 4 or 5 years.* Every combination of carriers has been tried, and of these Transcon and Campbell 66 give the best service, but it is not satisfactory.

Paramount Rug Cleaners, Dallas, Tex., receives shipments from such points as Cartersville, Dalton, and Ellijay, Ga.; shipments vary from 2 to 10 per month. Carriers used have been T.I.M.E., Bowman, Transcon, Braswell, Strickland and Red Ball. Shipments range from 200 to 3,000 pounds. Sponsored exhibit 28 listing 13 representative bills covering period from January to November 1960, and reflecting average times in transit ranging from 6 to 8.66 days. Time in transit by various combinations of carriers from the points named is not satisfactory because it takes too long to get a shipment, and satisfactory of service is important because large inventories cannot be maintained. Witness not familiar with all possible services available at the origin areas of his shipments. More rugs and carpeting could be bought from mills in the Georgia area and the business could be substantially increased if expeditious service available. Buying at these mills rather than locally in Dallas results in a saving of from 10 percent to 25 percent.

J. A. Olson Company, Winona, Miss., makes shipments to Montgomery, Ala., weekly, Campbell 66 having been used. Shipments are made to Atlanta using

Delta and LooMac. These services have not been satisfactory because shipments are too slow in transit and cannot be scheduled to meet sales deadlines. Principal problem is getting service beyond Jackson and Memphis. Is aware of the services of Jones and Dixie. Has also used Campbell 66 to Birmingham, and to some south Alabama points, as well as to Atlanta. Has routed shipments by various combinations of carriers to various points. Has not used some carriers because of lack of cooperation in tracing shipments. Tracing is difficult because of interchange of the traffic at Memphis or Jackson, and the carriers have not furnished tracing information. Service is not satisfactory, and proposed service would be convenient and would be used.

W. B. Jones Carpet Company, Fort Worth, Tex., receives shipments from Georgia and Alabama points about once a month, varying from 100 to 1,500 pounds. Transcon, RCA, England Bros., and Strickland have been used. Witness sponsored exhibit 29 listing 31 representative bills covering period from January to August 1960, and depicting inconsistent and excessive transit times ranging between 3 and 10.75 days afforded on Georgia originated shipments. Routes about 50 percent of the shipments. Has not used every combination of available service. *Complaints about existing service being too slow have been made to Transcon, Strickland, England Bros., and other carriers used, but service has not been improved.* The service proposed would increase purchases at mills in the involved area by from 8 percent to 12 percent. Time in transit is important, and company prefers to buy from mills at factory prices, rather than from local distributors, at higher prices. Had tried to route one shipment via applicant as connecting carrier, but when shipment came in it arrived by Strickland.

Parkomat Manufacturing Company, Dallas, Tex., makes frequent shipments including emergency orders, outbound to such points as Atlanta and Augusta, Ga., Birmingham, Ala., and to points in the Carolinas. Carriers used out of Dallas have included Roadway, Transcon, Red Ball and East Texas. *Complaints have been received from customers about slow service in connection with shipments so moving.* Time in transit is very important. Applicant's proposed service would be convenient and would be used. It would enable the company to increase its business in the involved area. *The witness has made complaints to the carriers about service afforded on outbound shipments with no success.*

Swim-Quip, Incorporated, Atlanta, Ga., receives shipments from El Monte, Arcadia, Los Angeles and Pasadena, Calif., all in the Los Angeles commercial zone, and from Houston two or three shipments a week are received. Witness sponsored exhibit 32 listing 59 representative shipments, mostly emergency in nature. These bills covered period from December 1959 to June 1960, and show the following transit times; 4 days afforded by East Texas and T.I.M.E. on one shipment from Houston, and an average of 7 days on 58 shipments handled by Transcon and T.I.M.E. from the Los Angeles area. Both T.I.M.E. and Transcon have been used from the Los Angeles area. On one shipment of 4,500 pounds, witness had requested T.I.M.E. to give him fast delivery. When not received on the sixth day, started a tracer. Delivery was made on the seventh day, and tracing information was received the day after delivery. *Complaints have been made to T.I.M.E.,* and some improvement in service experienced thereafter, but not on a consistent and dependable basis. The services of T.I.M.E. and Trans-

con considered unsatisfactory and insufficient in transit times provided to meet shipper's needs such as maintaining limited inventory, and to maintain effective competitive standing. Business is open for receipt of freight on Saturdays as well as the other work days of the week.

Laun-Dry Supply Company, El Paso, Tex., has a branch office and warehouse at Albuquerque, N. Mex. Shipments are received from a number of Georgia points, including Atlanta. Shipments from La Grange and Thomaston, Ga., average 3 or 4 a month, from Atlanta, 4 or 5 a week, from East Point, Ga., 4 or 5 a month. Time in transit is important from the standpoint of maintenance of inventory control with a constant change occuring in color and type of merchandise dealt in. Has used T.I.M.E. and freight forwarders, but such service do not afford dependable and prompt transit times. Finds at times that he must use air freight. Consistency of service is important. The proposed service would cut down the transit time and be renumerative to the company, saving at least $3,000 or $4,000 a year in telephone calls, tracing, and utilization of air freight service. Witness has attempted to improve service by using various lines and every method of combination presented to him. Even so, he had not been able to obtain satisfactory service. Witness sponsored exhibit 33 listing 131 bills covering period December 1959 through October 1960, and representing approximately 90 percent of bills for period covered on shipments that moved by motor carrier. This exhibit depicts average transit times afforded on the shipments listed as ranging from 6 to 7.47 days.

El Paso Towel Supply Company, El Paso, Tex., receives shipments from Columbus, Dallas, Griffin and La Grange, Ga., Durham, N.C., Fairfax, Ala. and

from Greer Mohawk and Lyman, S.C. Shipments received daily range from 100 to 2,000 pounds. Witness sponsored exhibit 34 listing 65 representative bills covering period October 1959 through September 1960, and showing average transit times on 25 shipments originating at Alabama and Georgia points on the proposed routes as approximately 7 days. Almost all carriers have been tried, and T.I.M.E. is presently being used. The Company routes its shipments, and time in transit is very important. The fastest service that can be obtained is needed because of competition and to handle many emergency orders. Uses all types of carriers, including freight forwarders and rail, and various combinations of carriers have been used, without finding a carrier affording prompt and consistent service. Purchases needed merchandise from supplier at Los Angeles albeit at premium prices because gets needed second day service from applicant in such instances. The witness desires the service proposed by applicant, because one or 2 days difference in transit time is very important. The service of T.I.M.E. is dependable, but needs shorter transit time. Has notified his shippers not to use rail service. Believes that business could be increased by 10 to 15 percent if proposed service available.

Jiffy Products Co., Dallas, Tex., makes shipments from Dallas principally to Birmingham and Atlanta, usually monthly. Shipments are emergency or stock, and are usually large, but sometimes range from only 100 to 500 pounds. Carriers used have included Red Ball, East Texas, Transcon, Strickland, Southwestern, and Herrin. These services have not been satisfactory. For example, on a shipment of 600 pounds made July 15, 1959, to Birmingham, by Transcon, the shipment was found a month later on Transcon's dock. A shipment of 425 pounds given to Red Ball on July 29, 1959,

was split and part of it did not arrive until 6 days after the other portion of the shipment had arrived. A shipment by Transcon to Atlanta on June 2, 1959, arrived in Atlanta 8 days later. Service of Transcon discontinued because of this type of service.

Krueger Air Conditioning Company, Tucson, Ariz., ships to Atlanta, Rome, Macon and Columbus, Ga., Birmingham and Montgomery, Ala., and to Columbia, S.C. Shipments are routed to Jackson, Miss., by applicant, and that service is dependable. Connecting-line service from Jackson into the area has not been satisfactory. The fastest service in point of time with the least amount of handling is needed. Shipments are susceptible to damage in transit. Routes all shipments unless routings specified by customer. Leaves routing beyond originating carrier to that carrier. Has made no investigation of all of the interline carriers available at Memphis.

Jacome's Department Stores, Inc., Tucson, Ariz., receives shipments from Atlanta, Marietta, Fairmount, Dalton, Commerce and Claxton, Ga., Alexander City, Ashford, Ashland and Haleyville, Ala. Carriers used have been freight forwarders, railway express, Texas-Arizona, Transcon and T.I.M.E., with freight forwarders being used most frequently. Time in transit has averaged from 6.00 to 15.00 days as reflected in exhibit 35, listing 39 representative bills covering period February 1960 through October 1960. Consistency of service is important for promotions, advertising, and inventory planning. A consistent service affording reasonably expeditious times in transit has not been obtained. Transcon has no agent in Tucson. T.I.M.E. has not been found to be satisfactory or dependable to shipper. Shipments are received on Saturday, the same as any other day of the week. Witness routes his shipments. Desires to purchase in

Georgia and Alabama markets because of price factor. Desires applicant's proposed service and if available would use it and increase volume of business originating in southeast markets.

Tex Manufacturing Company, El Paso, Tex., receives shipments from Georgia (e.g.—Columbus) and the Carolinas through the Atlanta gateway. Some are received weekly and some are received monthly, ranging from 1,000 to 15,000 pounds. If material not available, employees are idle and salaries paid for no work. Has used many motor carriers, including T.I.M.E., Bowman, RCA, Overnite, Texas-Arizona, and Ryder. Exhibit 36, showing service on 41 representative shipments handled by various combinations of motor carriers, was sponsored by this witness. For example, seven shipments from Columbus were subjected to an average of 7.85 days in transit by Dixie-T.I.M.E., and GHE-T.I.M.E. These services, including the time in transit, have not been satisfactory to shipper, have created bottlenecks, and at times have required payment for goods before they are received. Tracing has been difficult. *Loss of sales has been experienced as result of available transportation service.* Witness had difficulties with T.I.M.E. trying to trace shipments and get information. During one period it was found there were shipments on T.I.M.E.'s dock at El Paso that employees in the office did not know about. Shipments are received 6 days a week.

Bird & Son, Shreveport, La., receives inbound shipments, from Ensley, Ala., and Atlanta and Griffin, Ga. Shipments from other origin points could move through Atlanta gateway. Witness sponsored exhibit 37 listing 21 representative bills covering shipments for the period January through October 1960, and ranging in weight from 16 to 4,820 pounds. Transit

time is important to witness, but the exhibit reflects inconsistent and excessive times afforded. For example, on 6 shipments handled by Ryder from Birmingham, the average transit time was 3.33 days, and on 5 shipments from Atlanta handled by Ryder and by Dixie-Couch the average transit time was 6 days. Company also has problem in connection with outbound shipments which are made in truckload quantities of 30,000 pounds and move to such points as Anniston, Auburn, Eutaw, Gadsden, Leeds (Birmingham), Montgomery, Phenix City, Tuskegee, and Union Town, Ala. For the period January 1 to October 21, 1960, a total of 93 truckloads were shipped to the points mentioned. The company has used its own trucks because direct carrier service is not available. If applicant's proposed service was available, it would use that service and discontinue private carriage. Prefers to use motor carriers. Attempts have been made to use motor carriers to mentioned points for the last 7 or 8 years. Carriers used are T.S.C., Braswell, interlining with Dixie. Vicksburg, Jackson and Meridian, Miss., have been used as gateways because this is the most direct routing. Applicant has been used to points on its present lines.

Industrial Textile Company, Los Angeles, Calif., receives shipments daily from all cotton textile mills in the Georgia, Alabama, North and South Carolina areas. Routings are specified. Western Carloading has been used on most shipments because success has not been experienced with rail or trucks due to the number of interchanges. Transcon and T.I.M.E. have been used on some shipments from Georgia. Witness sponsored exhibit 38 listing 14 representative bills covering period February through October 1960 showing excessive times-in-transit provided ranging from 7 to 11 days.

Time in transit extremely important to witness. If applicant's proposed service was available, it would be used, and the company could increase its purchases in the Georgia and Alabama markets and such service would be very helpful.

Great Lakes Screw Corporation, Dallas, Tex., makes shipments to Montgomery, Ala., and Atlanta, Ga., and points in southern Georgia. At present is shipping only to Waycross, Ga. Shipper had no recent shipments to Montgomery and other Alabama points because the transportation service available to him at Dallas has prevented him from being able to effectively meet competition at other origins. Witness had received a letter dated March 10 from Dealers Supply in Atlanta saying that the reason no business had been done with him at Dallas was on account of the transportation service from Dallas. Applicant's proposed service would be used if it was available, and shipper would be able to develop markets and meet competition in that area.

Wolf Manufacturing Company, Waco, Tex., receives raw materials inbound and ships finished products outbound. Shipments are received from such points as Anniston, Opelika and Alexander City, Ala., points in North and South Carolina, and from such points as Trion and Gainesville, Ga. Receives from one to 12 shipments a week, ranging in weight from 200 to 2,000 pounds. Witness sponsored exhibit 39 listing to 49 representative shipments covering period from December 1959 to September 1960, and showing transit times ranging from 4 to 9 days. Various combinations of motor carriers have been used from points in Alabama, Georgia and the Carolinas. Service not satisfactory to witness because time in transit is big element. Experiences lost shipments and claim difficulties. Applicant's proposed service would be faster, and is de-

sired. *Customers have complained about existing service.* Shipments outbound from Waco move to such points as Atlanta, Ga., Birmingham, Bessemer, Tuscaloosa, Columbus and Montgomery, Ala., and to many other points. Shipments move outbound daily, and range from 100 to 2,000 pounds. Applicant's proposed service outbound also is desired and would be used. Witness did not know that Roadway held single-line authority from Coolemee, N.C., to Waco, but claims that Roadway has no terminal in Waco, and will not pick up or deliver at this point except on trailer loads.

Leonard's Department Store, Fort Worth, Tex., receives shipments inbound from points involved in the proposed extension. Witness sponsored exhibit 40 covering 89 representative shipments from December 1959 through October 1960, the vast majority of which moved from Georgia and Alabama points, and were handled by a large number of motor carriers and combinations of carriers. Time in transit is important to witness, particularly in connection with inventories and warehousing problems, but the time in transit afforded on its traffic has average 6.50 days generally, and ranged from 3 to 12 days. Routings are controlled on all shipments, and just about all carriers in the south have been used at times, including Ryder, Hoover, Transcon, and Overnite. Routing instructions are placed on all purchase orders. Transit time such as shown on exhibit is unsatisfactory because it is too slow and merchandise is always needed in order to replace stock. Witness recited specific complaints about services of carriers utilized. Witness had requested applicant to file the proposed application. Shipments are received 6 days a week. Transcon's service has been too slow, and Transcon maintains no terminal in Fort Worth.

Albert Methias & Co., Inc., El Paso, Tex., with branches in Phoenix and Albuquerque, receives shipments, stock and rush, from Dalton and LaFayette, Ga. Several shipments are received each week at each of the stores mentioned. Witness sponsored exhibit 41 listing 36 representative bills covering period September 1959 to August 1960, and reflecting average transit times ranging from 6.71 to 14.20 days. Shipper has used the various combinations of carriers and rail and forwarder services on shipments from Dalton, Ga., to all three points. Transit time is important to witness, because due to excessive transit time involved in receiving shipments from Georgia points, company is required to make purchases from competitive distributors in Los Angeles and Houston, which is not as advantageous from a price standpoint. An attempt has been made to route shipments through the Memphis gateway and that experience has not been good. Transcon's service is not satisfactory on account of time involved. Applicant's proposed service would be convenient, and it would be used.

Carpet and Linoleum Center, Oklahoma City, Okla., receives shipments from LaFayette, Ellijay, Calhoun and Dalton, Ga., two or three times a week. Transcon and Chief Freight Lines have been used. Witness sponsored exhibit 42 listing 20 bills covering all of the shipments received over the period November 1959 to October 1960, and reflecting time in transit averaging 6.50 days. The right to route shipments is retained, but is usually left to the shipper. *Has made continuous complaints to shipper mills about service, in connection with the various combinations of carriers that have been used from the Georgia points.* There is about 15 percent advantage in being able to buy from the manufacturers in Georgia. Merchandise

is purchased from the West Coast with 3 and 4 day service from Los Angeles, and witness cannot understand why he cannot get same service from Atlanta. Shipments are received on Saturday. Service as proposed by applicant would be convenient, is desired, and would be used. Applicant's service where used, has been entirely satisfactory to receivers.

Hunter Douglas Division of the Bridgeport Brass Company, Dallas, Tex., makes shipments to Atlanta and the Atlanta area, also to Birmingham, Ala., and Greenville, Miss. Shipments also received inbound from Atlanta. Various combinations of carriers have been used. The type of service on shipments received from company warehouse at Atlanta has not been satisfactory to witness because of the time involved and does not meet the requirements of the company. Applicant's proposed service is desired and would be used. Atlanta warehouse was formerly used from which to draw shipments for customer requirements, but service unsatisfactory, and those requirements are not drawn from Los Angeles because of better service from Los Angeles area to Dallas.

Georgia Art Supply, Inc., Atlanta, Ga., makes 30 to 40 shipments a month to such points as Monroe, Alexandria, Ruston, Minden, New Orleans, Baton Rouge and Shreveport, La.; Dallas, Fort Worth, Abilene, Sweetwater, Big Spring, Midland, Odessa, San Antonio, Rosenburg, Houston, Huntersville, Corsicana, Waco, Bryan, and El Paso, Tex., as well as to points in Mississippi and Oklahoma. Various carriers have been used on shipments to Louisiana and Texas, including A–NO, Dixie, Couch, East Texas, Transcon, Southwestern, LooMac, Hoover, and Red Ball. About 75 percent of the shipments are routed. Service has not been satisfactory on account of damage from

handling and length of time required. Interlining causes boxes to be crushed and damaged. *Customers have complained.* Service proposed by applicant would be convenient, is desired, and would be used. *Customers have been lost because of lack of expeditious service out of Atlanta.* Desires the proposed service on account of competition which it must meet in Dallas and Brownwood, Tex. Considers that business could be increased if proposed service made available.

S. Herzfeld Sportswear Manufacturing Co., Fort Worth, receives shipments from Georgia, Alabama, the Carolinas and Virginia. Witness sponsored exhibit 43 covering 43 representative shipments originating at points in the States just named, showing inconsistent times-in-transit, ranging from 6 days on shipments originating at Opelika, to 4.50 days on Columbus shipments, handled by T.I.M.E., East Texas, Couch, Red Ball, Dixie, Transcon, Thurston, Strickland, Ryder, Central, and Perkins in various combinations. Service which shipper received has not been satisfactory to meet his needs, such as maintaining effective inventory control. *Has actually experienced stoppage in production lines because of failure to receive shipments in time.* Desires service as proposed by applicant which would also be convenient and would be used.

Rainshine Top & Supply Company, El Paso, Tex., sponsored exhibit 44 covering 31 representative bills from October 1959 to September 1960, showing such slow transit times as 6.60 days afforded on shipments from Senoia, Ga., and 4 days on shipments from Lanett, Ala., handled by T.I.M.E.-Pike and applicant-Dixie or Cooper. It is quite important to this company to have fast delivery because it cannot invest large sums in inventory. Service proposed by applicant would be convenient, is desired, and would be used.

Does not route shipments, but requests shipper to route fastest way. Has utilized applicant's service on shipments received throughout the New Orleans or Jackson gateway and on shipments from Los Angeles (second morning delivery service) and found such service to be dependable and reliable. Witness desires 3-day service out of Atlanta to El Paso.

Kwikset Division of American Hardware Company, Anaheim, Calif., makes shipments into territory involved in this application from 2 to 5 times weekly. Between January and July, 1960, shipments were made to Auburn, Bessemer, Birmingham, Gadsden, Lanett and Tuscaloosa, Ala., and to Atlanta, Columbus and Newnan, Ga. Has used Transcon, T.I.M.E., Dixie and Ryder. Expeditious transit time is important because of competitive nature of commodity, but not received. Has experienced tracing difficulties on shipments, both with Transcon and T.I.M.E. *Has complained to Transcon about poor tracing and delivery service without any success.* Service proposed by applicant would be convenient, is desired, and would be used. Considers that transit time service involving 1 day, Anaheim to Los Angeles, and then 4 days to Atlanta reasonable, but has not received such service on reasonably dependable basis.

Astro Machine Products, Grand Prairie (Dallas), Tex., makes shipments to, and receives from Atlanta, Columbus, Montgomery, Meridian and Birmingham. Witness sponsored exhibit 46 listing 16 representative bills covering inbound shipments for the period December 1959 to August 1960, and showing inconsistent times in transit ranging for example, (1) from 4 to 12 days on shipments from Atlanta handled by Ryder-Red Ball or East Texas, Transcon, LooMac-East Texas, and A-NO-Strickland, and (2) from 5 days on Birmingham and Montgomery-originated shipments

to 7 days on Selma shipments, handled by various combinations of carriers. Shipments are made about every 10 days. Transit time is important because shipments are made to small jobbers who cannot carry large inventories. Carriers used have been East Texas, Transcon, and Braswell. Applicant's service between origin (Grand Prairie) and Jackson satisfactory—delays occur on connecting carrier's line. Each time there is an outbound shipment there is a like inbound shipment from the same point. Inbound shipments consist of merchandise to be rebuilt or repaired, after which they move outbound again. *Complaints have been received from customers and made by shipper to carriers about time in transit, both by letter and telephone.* Another group of freight bills was furnished to the witness by an Atlanta customer, on each of which East Texas was the originating carrier and T.I.M.E. the delivering carrier, and which mostly showed 8 days in transit, but one shipment was 5 days. Company desires service as proposed by applicant, and if available would use it.

Royal Rubber Company, South Gate (Los Angeles), Calif., makes both truckload and less-than-truckload shipments to points in the involved territory. Shipments to Atlanta are usually truckload. Truckload shipments are made each two or three weeks. Less-than-truckload shipments are made five times a week. Atlanta Service Warehouse handles the Royal Rubber Company account in Atlanta, and shipments are made outbound from Atlanta to points involved in the application, such shipments moving as far west as Louisiana. Carriers used on shipments to Atlanta have been T.I.M.E., Transcon, and two of the freight forwarding companies. *Transcon has on numerous occasions failed to make pickups for witness.* Transcon

has, on three different occasions before its service was discontinued, been called, and correspondence was had with Transcon in an attempt to correct the pickup service. Transit time by other carriers has been unsatisfactory to meet their requirements. *Complaints have been received from customers.* Service by both Transcon and T.I.M.E. on less-than-truckload shipments having been unsatisfactory, truckload traffic has not been tendered to those carriers. Shipper desires and will utilize applicant's proposed service, feels that its need is imperative.

Atlanta Service Warehouse, Atlanta, Ga., is a bonded merchandise warehouse, and distributes and stores merchandise for major manufacturers, and supervises the routing of outbound shipments. The witness receives all complaints. Royal Rubber Company, South Gate, Calif., is one of its accounts. This warehouse represents 130 different major accounts who ship large volumes of traffic out of Atlanta into the area involved. Witness selects the carriers on 50 percent of the outbound shipments. The remainder are routed by its principle. *It gets complaints about the transportation service regularly, and has tried various carriers and combinations on outbound traffic in an effort to find the best service.* That is one of the duties which it performs for its accounts. Time in transit and consistency of service are important. *Difficulty has been experienced with Dixie, GFA, and A-NO on pickup service; it is spasmodic, and some days pickups are not made.* For all accounts handled by the warehouse company, it makes as many as 100 shipments a day into Alabama, Mississippi, and Louisiana. Mostly the shipments are less-than-truckload, but there is an occasional truckload or carload movement. Applicant's proposed service is desired and would be used.

Commercial Heater Company, Fort Worth, Tex., ships to Rome, Atlanta, and Columbus, Ga., Birmingham, Ala., and Jackson, Miss. Primarily has used Transcon but has also used Herrin, Strickland, Campbell 66 and Ryder. To the extent utilized, applicant's service on its portion of shippers traffic has been satisfactory. Otherwise, service is not satisfactory because of late pickups especially by Transcon, and generally slow service. *Pickups are sometimes made a day or two after the call for the pickup.* Transcon has no terminal in Fort Worth. Neither Herrin nor Strickland maintain terminals at Fort Worth. There are no carriers with terminals in Fort Worth that can serve Georgia and Alabama. As exemplary of the type of service generally received, a shipment tendered to Transcon on October 13, 1960, destination Rome, Ga., was billed by Transcon on October 14; shipper notified on October 25 that shipment was refused on account of damage and was on hand in Atlanta. Shipment weighed 1,200 pounds and was valued at $945. Transcon was notified to return it for repair, and after two inquiries shipment was finally returned to Fort Worth on November 11, 1960. The shipment was repaired and reshipped the same day, but *the sale was lost.* Witness uses the service of National Carloading Company to the West Coast.

Roytex, Inc., Meridian, Miss., ships to almost all cities in California, Oregon, and Washington, and to Phoenix, Ariz. Most westbound traffic is moved by Campbell 66 through the Memphis gateway, and by Transcon beyond to, among others, Texas and California points. Other services have been used, including those of Republic Carloading and T.I.M.E. Shipments are made to Atlanta at least twice a month. Campbell 66 had represented that shipments would be interchanged with Transcon at Memphis, but in-

stead Campbell 66 runs them through Kansas City and then gives them to Transcon, and it takes 2, 3, and 4 days for them to get to Kansas City. Time from Kansas City to Los Angeles is not as represented. *Dixie is used on shipments to Atlanta but generally does not pick up the shipments until the next day after they are ready. Complaints had been made to Dixie about that.* Ryder has handled most of the Texas-destined shipments. Consistency and expeditious service important to accommodate customer requirements. Service which has been received is unsatisfactory, and shipper desires and would use the service proposed by applicant.

East Georgia Surluster Products Company, Thomson, Ga., receives shipments from Long Beach in the Los Angeles area each week. Carriers used are T.I.M.E. to Atlanta, and Overnite and Brown from Atlanta. Witness sponsored exhibit 48 covering 18 representative shipments between October 1959 and November 1960, and showing average transit time afforded by T.I.M.E. to Atlanta of 6.92 days. The average transit time from Atlanta to Thomson is 1.11 days. The service is not satisfactory to witness between Los Angeles and Atlanta. Consistency of service is important. Shipper desires applicant's proposed service.

Surluster Products Company, Long Beach, Calif., makes shipments from Long Beach to Birmingham and Montgomery, Ala., to Thomson, Ga., and to points in South Carolina. Carrier used has been T.I.M.E., and the last two shipments have been handled in part by Braswell. Time in transit and consistency of service are important to accommodate customers requirements. Birmingham receives two shipments weekly, Thomson one weekly, Montgomery one each month. Shipments average 800 to 900 pounds. *Complaints received from customers at Thomson, Ga., including East Georgia Surluster Products Co., and at Mont-*

gomery and Birmingham concerning slow service. Desires applicant's proposed service and would use it.

Muffler Factor Outlet, Inc., Riverdale, Ga., (in the Atlanta area), makes shipments to Winona, Jackson, Vicksburg, Meridian and Natchez, Miss., and to Alexandria and Baton Rouge, La. Two or three shipments are made to these points each day and the average weight would be 250 pounds. Time in transit is important. *The greatest difficulty with the transportation service is getting the shipments picked up* and then getting them to destination, because 90 percent of them are moved through Memphis. The carriers advise that they cannot pick up the shipments and refer them to White Trucking Company. White is called early in the morning and does not get to the place of business until after it is closed. *There have been times when shipments have been on shipper's dock for 10 days before they are picked up.* Other times, shipper keeps men on the dock overtime to get the shipments picked up. T.I.M.E. picks up shipments only when there is a minimum of 3,000 pounds. Texas markets are available and business in this area could materialize if the proposed service is made available. Existing service is poor and customers complain. *As a result business is being lost.*

Virginia-Carolina Chemical Company, Atlanta, Ga., makes shipments to Jackson, Miss., Shreveport and Sterlington, La., Houston and Fort Worth, Tex., Memphis, Tenn., Montgomery and Birmingham, Ala., and to Carlsbad, N. Mex. Carriers used have been Gordons, Deaton, Dixie, Hoover, and B. C. All shipments are routed. Transit time is important. Desires applicant's proposed service from Atlanta to Mississippi and Louisiana points, and to Fort Worth and Dallas.

United Tent & Supply Company, Los Angeles, Calif., supplies industries, special contractors in defense effort, and government armed services along the Pacific Coast. Shipments are received from Georgia, Alabama, and the Carolinas daily. All means of transportation have been used, including rail. Shipments range from 500 to 8,000 pounds. The company controls routings on most shipments. Carriers used have been T.I.M.E. and Transcon primarily. Has also used B & M in connection with Transcon, Ryder in connection with T.I.M.E., and Dixie in connection with Braswell. Service has not been satisfactory to meet witnesses' needs. Better transit time and a more dependable delivery service is desired. Applicant's service has been utilized to handle the shipments from Jackson, and this service is characterized as more dependable than any other carrier service utilized. Witness sponsored exhibit 73 covering 20 representative shipping documents on movements between period from February to December 1960 from various Alabama, Georgia, and Carolina points, and reflecting such transit times as 5.50 days on shipments from Columbus handled by applicant-Dixie, and 7.50 days on shipments from Anniston handled by BC-Western Carloading. Time in transit is important to this witness and that which he is now getting is not satisfactory to accommodate government contracts containing heavy penalty clauses where receiver is liable for nondelivery. In an effort to get better service, truck lines have been contacted, explaining the need, and then followed up. Applicant's service is desired because of the savings in time proposed. Many delays also are entailed because of interline and lost shipments. If the service was available, company could increase business done in the Alabama-Georgia area

by from 10 to 12½ percents amounting to $30,000–$40,000 in gross volume, a year.

Ace Novelty Machine Company, Atlanta, Ga., receives shipments from Inglewood, Calif., in the Los Angeles area. Transcon is handling those shipments. Witness sponsored exhibit 75 covering 8 representative bills between October and December 1960. Average transit time by Transcon (6.25 days) has not been satisfactory. Transit is important to witness. Inasmuch as its products are sold at the time ordered, the customer is in a hurry, and fourth day service proposed by applicant is desired. It is also needed in order to meet competition of competitors at Jacksonville, Fla., and Chicago and New York.

Cohn's Department Store and *Gottleibs Furniture Store,* Tuskegee, Ala., are located in the same building. Department store shipments are received from Atlanta, Columbus, and other Georgia points, and from Memphis, Tenn., and other points on the proposed routes. Carriers being used are Baggett, Dixie and Deaton, and principally Baggett. None of the carriers have terminals or agency stations at Tuskegee. Time in transit is important. Witness sponsored exhibit 78 and 79 covering 25 representative shipments between July and December 1960 to show poor and inconsistent average transit time provided by these carriers, such as 3–4 day service on shipments from Atlanta, 2–6 day service on shipments from Columbus, and 7 day service on a shipment from Villa Rica, Ga. If shipments could be obtained from Memphis faster, a lot more merchandise could be bought there. The witness thinks there should be overnight service from Birmingham. Service proposed by applicant is desired and would be used.

Crawler Parts Corporation, Montgomery, Ala., makes shipments to Atlanta, Birmingham, New Or-

leans, Dallas and into North and South Carolina points. Shipments are stock and emergency items, and average about 1,000 pounds. Carriers used out of Montgomery are West Bros., Dixie, A-NO, Hall Motor, Roadway interchanging with Couch, Delta, Garig, and Braswell. Time in transit is important because its merchandise is expensive, and large inventories cannot be carried. Service to the points indicated has been unsatisfactory because of unreasonable transit times experienced, such as 6-day service on shipments to Dallas. *As examples, shipper specified four complaints in connection with utilizing joint-line services of Dixie-Hennis Freight Lines, Dixie-Couch, West-Braswell, and A-NO Garig, all occurring in June, July, and November, 1960.*

Caddo Coffee & Cafe Supply Company, Shreveport, La., receives shipments from Atlanta two or three times a month, many of which are special orders, ranging from 200 to 700 or 800 pounds. Controls routings, which have been Dixie to Jackson or A-NO to New Orleans, and Couch to Shreveport. Transit time is important because of demands of customers. Shipments subject to damage in transit from handling, practically everything being glass. Witness sponsored exhibit 80 covering 15 representative shipments between December 1959 and October 1960, showing average transit time of 4.46 days and representing about 50 percent of shipments out of Atlanta. Desires 2 day service. Consistency of time in transit is very important in connection with stock control and to keep customers happy. *Has found it necessary very frequently to trace on Couch's service in particular, and has complained to this carrier.* Receives shipments all day, 6 days a week. *Received customer complaint in letter from Atlanta account.* Has utilized applicant's service

from California points, and found such service dependable and reliable.

Davis Foundry & Machine Works, Rome, Ga., makes shipments to Mississippi points. All shipments can be accommodated in an ordinary van-type vehicle. Some shipments are also made to Alabama, Louisiana and Texas; transit time is important. Inbound shipments are received from New Orleans and Birmingham. Shipments from Birmingham have moved through Atlanta for interchange to Rome, and sometimes are routed through Chattanooga, Tenn. Shipments from Birmingham are needed as soon as they can be obtained. Emergency shipments are received from New Orleans. Applicant's proposed service is desired and would be used.

Taylor & Brewer Foundry Company, Rome, Ga., makes shipments to Birmingham, Gadsden, Montgomery and other Alabama points. Baggett and Dixie-Ohio have been used. Shipments to Gadsden, Birmingham and Montgomery move each 2 or 3 weeks, and range from 200 to 1,400 pounds. Emergency shipments are made two or three times a week. Ninety percent of shipments are repair parts, and transit time is important because of breakdowns. There is no direct service from Rome to Gadsden or Montgomery. The best service he can obtain is from Rome to Atlanta, and *complaints have been made to carriers utilized about this method of handling.* Consistency of service is important to witness because it would enable the witness to advise his customers when shipments could be expected. *Customers have been lost because of the available motor carrier service to both Montgomery and Birmingham.* If applicant's proposed service was available, it would be convenient to him, and it is desired.

Murray Company of Texas, Inc., Atlanta, Ga., has main factory at Dallas, and shipments are received from that point. Transcon has been used on those shipments for the past 5 or 6 months. Other carriers used are Bowman, Hoover, LeeMac and East Texas. Except during winter months, receives from two to four shipments out of Dallas per week, usually weighing about 2,000 pounds. Shipments are subject to damage. Transcon promises to make third morning delivery in Atlanta from Dallas, but such service not given. Witness sponsored exhibit 84 covering 10 representative shipments handled by Transcon and subjected to an average transit time of 5.40 days, between February and December 1960. Time in transit is important to control inventories. *Complaints have been made to Transcon about the service.* During the summer warehouse is open 6 days a week, and sometimes Sunday. Deliveries are accepted on Saturdays. Shipments are made outbound from Atlanta to southeastern states, the witness particularly naming towns in Alabama. Applicant's proposed service would be convenient, is desired, and would be used.

Automotive Paint & Supply Company, Montgomery, Ala., receives shipments from Shreveport, and Atlanta and Tucker, Ga. One large order is received from Shreveport each month, with three or four monthly fill-in orders. Time in transit is essential on shipments because if colors are not in stock sale is lost. Shipments from the points named average about 2,000 pounds, with the fill-ins smaller. Carriers used have been Dixie, West Bros., AAA Motor Lines, Ryder, and Braswell to Jackson. Out of Atlanta, A–NO has been the principal carrier used. Service by applicant from Shreveport to Jackson very satisfactory and trouble generally experienced has been after

shipment was interlined at Jackson, especially with Dixie's service. *Experiences poor delivery service, and often has to pick up freight at carrier's dock to insure delivery on time to customers.* Encounters frequent difficulties in tracing shipments originating at Shreveport because of interchange and of carriers' breach of routings. Witness sponsored exhibit 85, covering 8 representative shipments between February and October 1960, and depicting average transit times of 2.75 to 6 days. Proposed service would be advantageous, convenient, is desired by witness, and would be used in order to increase sales by 10 percent ($300-400 a month), and afford better service to customers. Receives shipments all day, 6 days a week.

Shreveport Brass Works, Shreveport, La., sponsored exhibit 86 covering 7 representative shipments from February to October 1960, and showing transit times afforded by Ryder ranging from 4 to 5.60 days. Shipments are received from Birmingham and Anniston, Ala., averaging three or four per month. Time in transit is important. Ryder system has been used during the last 12 months but this service is not satisfactory, and shipper desires a dependable 2-day service. Prior thereto, various combinations used requiring two-line haul, but not considered adequate. Shipments are received all day, 6 days a week. Witness desires applicant's proposed service.

Anderson-Dunham, Incorporated, Minden, La., receives shipments from Montgomery, averaging from 2,000 to 3,000 pounds. Smaller shipments of replacement parts also are received. Receives shipments from Dallas, Houston, Tulsa and Memphis. Particularly interested in shipments from Montgomery, Ala. Desires proposed 2-day delivery out of Montgomery. Witness sponsored exhibit 87 listing 5 representative shipments

from Montgomery, from January to September 1960, afforded an average transit time of 5.33 days as handled by West Couch and Dixie-Couch. Shipments are received out of Dallas because shipments can be delivered overnight, but purchases made at Dallas market are at a premium price. Desires service proposed by applicant and would use it. Shipments out of Montgomery would be more frequent because more desirable market there, if quicker delivery available.

Traffic Signals, Inc., Shreveport, La., manufacturers traffic signal equipment, and ships to all points in Mississippi, Alabama, Georgia, and points beyond. Principal customers are cities. Repair and replacement parts are also shipped. Has used Ryder principally. The company routes 90 to 95 percent of all shipments. Applicant's proposed service is desired. Time in transit and consistency of service is important.

Royal Crown Bottling Company, Waco, Tex., receives shipments from Columbus, Ga., once a week during the summertime, once every 2 weeks in the winter. Shipments have been made principally by rail. Desires applicant's service and would use it. Time in transit is important, otherwise ties up too much operating capital. Sponsored exhibit 89 covering 32 representative shipments handled by rail and subjected to an average transit time of 6.25 days, from September 1959 to October 1960. Witness does not know all present available service but has inquired of competitors about service in an attempt to improve its transportation requirements.

Royal Crown Bottling Company, Abilene, Tex., receives shipments from Columbus, Ga., about once a week during the summer, slower in the winter. Carriers used have been Dixie, Ryder, Braswell, Transcon, Sunset and Merchants, and combinations thereof.

Witness sponsored exhibit 88 covering 20 representative shipments from February to November 1960, and showing transit times ranging from 5.33 to 8.24 days. Company does not have capital to tie up in stock; therefore, time in transit is important. Practically every combination of carriers utilized to obtain 3 day service on Columbus-originating shipments without success, the most recent being Dixie, Transcon, and Sunset. Receiver needs third morning delivery, as here proposed, to coordinate inventory supply with customer demands. The protestants used have promised 4 day delivery but always fail to provide such service, resulting in witness having to borrow merchandise from nearby bottlers entailing expenses. Will use proposed service if authorized.

Poulan Saw Company, Inc., Shreveport, La., makes shipments into Atlanta and other Georgia points, and through the Atlanta gateway to the Carolinas, Virginias, and further points north and east. Carriers used have been Ryder, Southwestern, Braswell, Couch, Herrin, Strickland, and T&P Railroad. Interline of shipments always involves loss of time. Present service utilized is a 3-line haul. Desires applicant's proposed 2-day service to Atlanta and would use it. Time in transit important to meet competitive situation in area.

Claxton Saw Company, Claxton, Ga., receives shipments from Shreveport through the Atlanta gateway, possibly one a week. Transit time and consistency of service are important in order to satisfy customers and to maintain inventory control. The destination carrier utilized out of Atlanta to Claxton is Benton. There is no other carrier that can handle the shipments. Witness sponsored exhibit 90 covering 13 representative shipments moving between January and October 1960, and showing an average transit

time of 6.25 days afforded on shipments from Shreveport. Shipments are received 7 days a week, including Sundays and holidays. Service presently received is unsatisfactory because too slow. Desires a service from Shreveport of not over 4 days. Applicant's proposed service would be convenient and is desired. Witness has agreed with consignor that routing now used is best available, considering all available carriers.

Smith Venetian Blind Company, West Monroe, La., receives shipments from Birmingham. In 1959 shipments averaged one a week, but off some in 1960; average 1,000 to 1,500 pounds. Loss of one day in transit could mean loss of a job. Shipments have been routed by Ryder because it is a single-line service. Witness sponsored exhibit 92 covering 22 representative shipments from Birmingham to West Monroe in 1959 and nine during 1960, all handled by Ryder, and showing an average transit time of 5.04 days. Time in transit is important. Applicant's proposed service is desired and would be used. If it was available, shipments from Birmingham would be increased. Applicant has been used on traffic from Dallas, and such service characterized as reliable and dependable.

Texas Refinery Corporation, Fort Worth, Tex., makes shipment to Birmingham and to various points along applicant's proposed routes in Georgia and beyond daily. Shipments range from 600 to 700 pounds to full truckloads. Warehouses are maintained at Birmingham and Greensboro, N.C. Shipments are made direct to customers as well as to warehouses. Carriers used include Central Freight, Campbell 66, Braswell, Bowman, Delta, Couch, Dixie, East Texas, and just about all of the involved protestants without specifically naming them. Most of available carriers have been used, either as delivering carrier or in combination from Forth Worth. Applicant's service has

been used to other points and Louisiana, and is very satisfactory. Company has competitors, which competition (local distributors) must be met with a fast delivery service. Transcon, Strickland, and Herrin have no terminals in Fort Worth. Their *pick-up and delivery service is not dependable. Complaints have been made by letter to Transcon about pick-up service without response. They have been made on numerous occasions to Transcon's solicitor. Shipper lost a Georgia account because of poor service.* Total shipments from Fort Worth to Birmingham for the period January 1 through October 20, 1960, amounted to 1,200,000 pounds. Company feels that it should have second morning service to Atlanta, and third morning to points within a reasonable distance from Atlanta. Such service would be used. *Six complaints were specifically detailed* as examples of the problems which shipper has had. Proprietary carriage now handles most of shipper's traffic to accommodate customer requirements. If application granted, company would probably discontinue present use of its own trucks and use motor carrier service. Has specifically requested applicant on numerous occasions to file such an application.

R. C. Cola Bottling Company, Shreveport, La., sponsored exhibit 93 covering 11 representative bills between May and November 1960, and showing that on nine shipments handled by Dixie-Couch from Columbus the average transit time afforded was 5.44 days, and on two handled by Ryder from Columbus, the average was 5.50 days. Shipments are received from Columbus once a week, and sometimes two or three per week, except in the winter months. Service has not been satisfactory. Applicant's proposed service is desired and would be used. One of the big difficulties is that shipments do not come in when they are sup-

posed to. Time in transit too slow and inconsistent. Faster service would give better inventory control.

Lipper-Stutsman Company, Inc., Shreveport, La., receives shipments from Atlanta twice a month, from Meridian one a week. Carriers used have been Dixie and Ryder. Shipments also are received from Norfolk, Va., through the Atlanta and Birmingham gateways. These shipments subject to damage by excessive handling in transit. Witness sponsored exhibit 94 covering 12 representative bills, May and August 1960, reflecting average transit time on shipments from Atlanta, Birmingham, and Meridian, of 3.44 days. Time in transit is important and so is consistency. *Complaints have been made to Ryder and not much improvement thereafter.* Present service is unsatisfactory to witness. Tracing shipments with several carriers has been unsatisfactorily. Desires the service proposed by the applicant, and would use it.

Mid-Continent Steel Casing Corporation, Shreveport, La., makes shipments to Montgomery and Elba, Ala., also to Savannah and Cedartown, Ga., as well as to points in the Carolinas. Transit time is important because shipments are made for particular jobs and when order completed company is fortunate to have 2 or 3 days to get them to destination. Company does nearly all routing. Carriers used have Ryder and Couch. A number of specific instances of unsatisfactory service were recited dealing with shipments to various points. Tracing has been a special difficulty. Desires faster and more consistent service. Applicant's proposed service would be convenient, is desired, and it would be used directly to Montgomery and to points such as Atlanta, Rome, Gadsden, or Birmingham, for interchange with connecting carrier on service to Cedartown and other points beyond applicant's present or proposed routes. In 1960, this

company shipped about 5,000 tons of freight, of which 90 percent moved in for-hire motor common carriage. The remainder moved by private carriage through customer pickup.

H. W. Baker Linen Company, Dallas, Tex., ships to such points as Atlanta, Augusta, Dalton, Newnan, Griffin and Hampton, Ga., Fairfax, Ala., and into the Carolinas. Carriers used have been East Texas, Red Ball, Transcon, H & NT, Roadway and Braswell. Applicant's service always satisfactory on shipments to Louisiana, Jackson, Miss., and Los Angeles. Witness sponsored exhibit 95 covering 132 representative shipments between January and September 1960, and showing the following average transit times, *inter alia:* 5.59 days on shipments from Atlanta; 5.31 days on shipments from Fairfax, Ala.; and 7.33 days on shipments from Newnan, Ga. Transit time is important, and the service is unsatisfactory. It is too slow and inconsistent. Shipments from Atlanta supposed to be second or third morning. Effort has been made to improve service. Various combinations of carriers have been used. *Orders have been lost because of unsatisfactory transportation service now available. Complaint made to Mercury about specified shipment handled by it on January 6, 1960, taking 5 days to deliver.* Difficulty has been experienced in tracing shipments. The existing service is unsatisfactory.

Wellan's Department Store, Alexandria, La., receives shipments from points in Georgia, Alabama, Mississippi and the Carolinas. Shipments from the various points are two or three times a month, ranging from 80 to 1,000 pounds. Carriers used have been Ryder, Couch, Braswell, Dixie, Herrin, Harper, and others, including Southern Pacific and T & P Railroads. Witness sponsored exhibit 96 covering 30 representative shipments from September to October

1960, reflecting transit times ranging from 5 to 13 days. Time in transit is important, to accommodate rush orders requiring timed deliveries. Existing service and transit time is unsatisfactory because it takes too long and is inconsistent. Desires service such as proposed by applicant, and would use it.

L. B. Price Mercantile Company, Shreveport, La., operates stores at Shreveport, Alexandria, and Monroe, which are points on applicant's present routes, and also has stores at Lake Charles and Lafayette, La. Shipments are received from Georgia and Carolina points, ranging from 100 to 2,000 pounds. The delivering carrier in Shreveport has been mostly Couch. Witness sponsored exhibit 97 covering all of the shipments (49) from January to November 1960, and reflecting average transit times on shipments handled by motor carriers from Georgia points of 6.09 days. Various combinations of motor and rail carriers are used. Transit time is important to witness for the control of inventory and to promote increased sales. Service which is presently available is unsatisfactory because too slow and inconsistent. Proposed service of applicant is desired and would be used. The witness supported the application on behalf of all the stores operated by this chain. Applicant's service has been used and is considered a reliable and dependable carrier. Has specified applicant in connection with routing certain Georgia originated shipments, but such routings always breached.

L. B. Price Mercantile Company, Alexandria, La., sponsored exhibit 98 covering 34 representative shipments between February and November 1960, showing average transit times similar to those described in the immediately preceding paragraph. Transit time is important. That presently received not satisfactory, and merchandise stock runs short, because heavy in-

ventories cannot be carried. Desires the applicant's proposed service and would use it.

Southwest Petroleum Company, Fort Worth, Tex., makes shipments to Alabama and Georgia points, particularly to Birmingham, Ala., and Atlanta and Columbus, Ga. Ships over a million pounds to those states and to the Carolinas and Florida. Carriers used from Fort Worth have been Southwestern, Hoover, East Texas, Transcon, T.I.M.E., and Red Ball. Shipments are no longer made through the Jackson, Miss., gateway because of trouble with Dixie. *Complaints made to carriers about slow transit times to which shipments consistently are subjected, but service has not improved. Various combinations of carriers have been tried but found not satisfactory. Specific complaints detailed concerning services of Transcon, Roadway, and Southwestern-Atlanta Union Point Truck Lines.* Concerning Roadway's service, shipper complains that Roadway has solicited business under its new authority on the basis of direct service to Birmingham and Atlanta, and actually shipments tendered it, destined to points in Alabama and South Carolina, are picked up by Roadway and interchanged at Dallas for movement to destination. Such service not considered satisfactory. Service proposed by applicant is desired and would be used. Witness requested applicant to file this application a couple of years ago. He believes that the proposed service would increase sales in the area by 30,000 pounds a month. *Sales have been lost because of inadequate transportation service available.* He would have 1,000 or more shipments per month in the involved area during the months of May, June and July, about ⅓ of which would move from Fort Worth and the remainder from Birmingham.

H. W. Baker Linen Company of Atlanta, Ga., ships to Gadsden, Birmingham, Tuscaloosa and Montgom-

ery, Ala., with limited shipments to points west, including Dallas and Fort Worth. Receives shipments inbound from Fairfax, Ala. Time in transit is important. Shipments range from 50 to 500 pounds. Service proposed by applicant would be convenient, it is desired, and would be used. It would increase ability to serve customers and increase sales. Has utilized service of many protestants in attempt to improve service without success.

Jones Iron Work, Baton Rouge, La., receives shipments from Birmingham, Ala. Shipments average about one every 2 months. Has used all carriers that operate into Baton Rouge. Witness sponsored exhibit 99 covering 7 (all) shipments between December 1959 and August 1960, and depicting average transit times ranging from 3 to 8 days as provided by Ryder and by West Bros.-Herrin. Time in transit is important. Service which he has been getting has been unsatisfactory to meet his needs. Desires a 2 day dependable service. *Has experienced difficulty in getting shipments delivered* from the carriers after they arrive in Baton Rouge. If applicant's proposed service was available, it would be beneficial in increasing sales which have been off 80 percent during 1960 as compared to previous year. Desires the proposed service and would use it.

Car Parts Depot, Inc., El Paso, Tex., operates 11 stores other than the one at El Paso; at Marfa, Alpine, Penitas and Kermit, Tex., Silver City, Los Cruces, Alamogorda, Roswell, Artesia, Carlsbad and Hobbs, N. Mex. Merchandise is normally received at El Paso and then forwarded to the other stores. An average of one shipment per month has been received from Birmingham, ranging from 1,500 to 2,500 pounds. Witness sponsored exhibit 100 covering 14 shipments between November 1959 and August 1960, and reflect-

ing an average transit time of 9.57 days. Delivering carriers have been T.I.M.E. and Whitfield. Time in transit is important because it affects turnover and profits. Present transit time is not satisfactory. Has used applicant's service out of Los Angeles and characterizes it as "very good." Applicant's proposed service would be convenient, is desired, and would be used.

Tom's Toasted Peanuts, El Paso, Tex., receives shipments from Columbus at least once a week. Shipments range from 2,500 to 3,000 pounds. Special orders are also made and range from 100 to 1,500 pounds. Witness sponsored exhibit 101 covering 33 representative shipments handled in joint-line service between March 1960 and January 1961, and showing average transit time of 3 days by Dixie from Columbus to Jackson, and of 2.42 days (including Saturdays and Sundays) by applicant from Jackson to El Paso. On 19 shipments where no week-end intervened, average for applicant was 2 days. Such service is not satisfactory. Transit time and consistency of service are important for many reasons, including control of inventory. Transit time should be 3 or 4 days from Columbus. Service proposed by applicant from Columbus would be convenient and is desired. The service performed by applicant presently from Jackson is considered dependable and reliable. Shipments shown on the exhibit involved about one-half of the shipments received during, and are representative of, the period covered. Witness had discussed his problem of routing and service with the supplier at Columbus, explaining the delays, and was advised that any change of routing would only delay the shipments further. Witness has used only Dixie-Braswell for the past year and one-half.

Industrial Uniforms, Inc., El Paso, Tex., receives shipments from La Grange, Ga., ranging in weight from 500 to 800 pounds. Witness sponsored exhibit 102 covering 15 representative shipments between November 1959 and October 1960. The average transit time on 14 of these shipments handled by GHE-T.I.M.E. was 8.07 days. Time in transit is important in order to provide customer service, and if not had there is immediate hazard of loss of the customer. Transit time is unsatisfactory and company has avoided buying at La Grange, Ga., for that reason. It can order from Los Angeles and get excellent next day service from applicant and does so many times, although it considers supplies from La Grange better for its purposes. If proposed service was available, company could increase its business from La Grange from 25 to 35 percent. Experiences difficulty in tracing shipments handled by T.I.M.E. Proposed service would be convenient, it is desired, and would be used.

Momsen Dunnegan Ryan Co., El Paso, Tex., also has stores and distributes its commodities from Phoenix, Ariz., and Albuquerque, N. Mex. Its annual volume of business amounts to $15,000,000. Receives shipments from points in the southeast, including Anniston, Birmingham, Demopolis, Gladsden, and Opelika, Ala., and Columbus and Rome, Ga., ranging in weight from 3,000 to 5,000 pounds. Various carriers have been used, including T.I.M.E., Strickland, Sunset Ryder, Texas-Arizona, Transcon, and Whitfield. T.I.M.E., is used both direct and in combination. Applicant has been used satisfactorily from New Orleans, Memphis, Jackson and Los Angeles. Witness sponored exhibit 103 covering practically all (80) of the shipments between December 1959 and June 1960, and showing average transit times ranging from 5.57

days on shipments from Birmingham, to between 8 and 10 days on shipments from Gadsden, Opelika, and Rome. Witness states time in transit and consistency of service are important. Present services described above are unsatisfactory to meet consignee's need because of slow transit time, and numerous instances of loss, damaged or short shipment. Proposed service would be convenient, is desired and would be used.

Levy's Department Store, Tucson, Ariz., receives shipments from involved Georgia and Alabama points, as well as from Meridian, Miss. Shipments (both special and fill-in orders) range from 100 to 1,500 pounds. Universal Carloading, T.I.M.E. and Transcon have been principal carriers used. Witness sponsored exhibit 104 covering 88 bills (representing 60 percent of shipments for period used) between December 1959 and September 1960, and reflecting average transit times ranging from 7 to 12 days. *Of these shipments, 40 (approximately 50 percent) had loss or damage notations on the bills.* Transit time and consistency of service are important to witness. Excessive transit time affects ability to take the 10-day discount because shipments from the area are often in transit 10 or more days. Transit time as shown is not satisfactory because too slow. Merchandise is subject to damage, and freight forwarder service is used, mainly to get away from transfers and avoid damage and shortage. Applicant's proposed service would be convenient, is desired, and would be used.

Albert Steinfield & Co., Tucson, Ariz., receives shipments from pertinent points in Alabama, Georgia, and Mississippi, and also from the Carolinas and Virginia. It routes traffic, and Pioneer Carloading, T.I.M.E., and Transcon have been used. Witness sponosred exhibit 105, showing 39 representative shipments between December 1959 and August 1960, subjected to

transit times ranging from 7 to 11 days. Service is not satisfactory because too long in transit, and receiver has deadlines it must make with respect to advertising prior to sales or promotions. Has had difficulty in tracing shipments. Time in transit and consisteney of service are important to witness. Various combinations of carriers have been used and has found no consistency of or adequate service to meet its needs. Has used applicant's service from other points satisfactorily. Witness had talked with various carriers for a good many years in an attempt to improve the type of service received without success. Applicant's proposed service would be a convenience, is desired, and would be used.

Reward Ceramic Color Corporation, Los Angeles, Calif., ships to such Georgia points as Atlanta, Rome, Columbus, and to Montgomery and other points in Alabama. Shipments average 500 to 1,000 pounds. Transfers in lading between multiple-line carriers subject commodities to loss through freezing, abuse, and breakage. Has principally used Transcon, also T.I.M.E. & Dixie, but they provide inconsistent service from standpoint of transit time. Applicant's service to points it presently serves has been found to be very satisfactory. Witness sponsored exhibit 106 covering 16 representative shipments between February and November 1960, and reflecting transit times ranging from 7 to 9 days. Applicant's proposed service would be convenient, is desired, and would be used. Shipments in the Carolinas are routed to break over the Atlanta gateway. Witness also uses Universal Carloading and Distributing Company because they are faster than presently available service.

Capital Armature Works, Baton Rouge, La., receives shipments from Atlanta, moved by quite a few carriers because witness had not been able to find a

satisfactory carrier. Witness sponsored exhibit 107 covering 12 representative shipments between October 1959 and September 1960, and reflecting an average transit time of 6.66 days. Time in transit is important because of the range in types of motors; it does not try to establish large inventory. Time in transit is unsatisfactory and service not exceeding 3 days from Atlanta is desired. Applicant's proposed service would be convenient, and is desired, especially since the suppliers have warehouses at Atlanta. Because of slow transit time has found it necessary to go into other markets, such as Houston and Dallas from which overnight service from applicant is available, and St. Louis with second morning service available. Witness has found service from Atlanta so poor that limits purchases in this market.

Parise Department Store, Tucson, Ariz., sponsored exhibit 108 covering 27 representative shipping documents showing service received by Transcon, Roadway, T.I.M.E., Bowman, and other motor carriers, and by freight forwarders, from Birmingham and Evergreen, Ala., and from Flowery Branch, Ga., as well as from points beyond in the Carolinas and Virginia areas. The exhibit reflects transit times ranging from 4 to 11 days. To witness, 10-day discount on merchandise purchased in southeast is frequently lost, and *complaint made from time to time to carriers about transit time afforded on shipments without any improvement in service.* Consistency of service is very important in ordering merchandise. Applicant's service satisfactorily utilized from other points. Applicant's proposed service would be convenient, is desired, and would be used. If proposed service authorized purchases would be increased from southeast by 5–10 percent. At present, more purchased from west coast, albeit at premium prices, because of service.

Triangle Electric Supply Co., Inc., El Paso, Tex., receives shipments from relevant Georgia and Alabama points. Sponsored exhibit 109 covering 43 shipments (90 percent of its traffic) between September 1959 to September 1960, reflecting transit times ranging from 5.83 to 9 days. Carriers used have been T.I.M.E., Transcon, Whitfield, Barnes, Ryder, Texas-Arizona, Hoover, East Texas, Merchants, Dixie, Coach, Red Ball, Sunset, Herrin, Gillette. Time in transit and consistency of service are important because many shipments carry government priority ratings which designate limited time period within which job must be completed, and contain penalty clauses. *Complaints have been made to Transcon about transit time and tracing service without success.* Of annual gross business, approximately 50 percent comes from Georgia and Alabama. Applicant's proposed service would be convenient, is desired, and would be used. Most shipments out of Carrollton, Ga., move part of way in company-owned truck. Has satisfactorily utilized applicant's service from other points. If proposed service authorized, expects to increase tonnage from southeast by 5 to 10 percent.

Trickett's Inc., Shreveport, La., sponsored exhibit 110 covering 32 representative inbound shipments from Dalton, Ga., Birmingham, the Carolinas, and points in Virginia, between February and October 1960. Transit times on these shipments from Georgia and Alabama origins have averaged 5.38 days. Witness tells shippers to route his traffic the "usual way" when best available routing is found. Witness states transit time is important in the retail furniture business because most of business is on special orders requiring timed deliveries to customers, and consistency is equally important. Existing service has been unsatisfactory to meet witnesses' needs. Applicant's service

to Shreveport used satisfactorily from other origin points. Applicant's proposed service would be convenient, is desired, and would be used.

Morris & Dickson Co., Ltd., Shreveport, La., receives shipments two or three times a week from Atlanta. Witness sponsored exhibit 111 covering 24 representative shipments mostly moving from Atlanta to Shreveport between January 1 and September 30, 1960, handled by rail service and by many combinations of motor carriers. Transit times afforded on these shipments ranged from 5 to 8.75 days. Time in transit is important, particularly because of competition, to accommodate sales promotion deadlines, and in order to maintain minimum inventory. It competes with wholesale druggists at such points as New Orleans and Monroe, La., and Jackson, Miss. Present service is not satisfactory to witness because it is irregular and sporadic. Consistency of service is equally important. Applicant's proposed service would be convenient, is desired, and would be used.

W. T. Silmon Wholesale Company, West Monroe, La., receives shipments from most of the points on applicant's proposed extension routes, including Montgomery and Birmingham, Ala., Atlanta, Ga., and Meridian, Miss. Witness sponsored exhibit 112 covering 76 representative shipments between December 1959 and November 1960, ranging in weight from 120 to 4,492 pounds, and subjected to transit times ranging from 3 to 7.25 days. Witness generally routes traffic and has used a number of combinations of carriers, as well as Ryder's direct service. Time in transit is important because candies are perishable, and to enable the taking of discounts and maintenance of inventory control, but existing service has not been satisfactory in these respects. Applicant's proposed

service should be convenient, is desired, and would be used.

Ajax Hardware Manufacturing Corporation, City of Industry, in Los Angeles, Calif., commercial zone, sponsored exhibit 113 covering 36 representative outbound shipments to such points on the proposed routes as Atlanta, Columbus, Rome, Montgomery and Bessemer between July and December 1960, and reflecting transit times afforded by T.I.M.E. and Transcon generally ranging from 7 to 10 days. Time in transit and consistency of service are important to witness to accommodate customers' limited inventories and need for prompt delivery of emergency or rush orders, and shipper is not satisfied with existing service in these respects. Applicant's proposed service to such points at Columbus, Birmingham and Atlanta would be convenient, would be used, and would result in shipper being able to build up sales in southeast area through its salesmen in that territory.

Clark Waddell Supply Company, Tulsa, Okla., ships from Senoia, Columbus, Dalton, and Cornelia, Ga. Has been trying out several forms of transportation; originally shipments were by rail, then routing was left up to the shipper, and now motor carrier service is being tried. Witness sponsored exhibit 115 covering 17 representative bills between January and November 1960, and showing transit times ranging from 5–9 days on shipments handled by motor carriers (Pike-T.I.M.E., Pike-Dixie-applicant). Time in transit and consistency of service are important, and neither has been satisfactory to meet witnesses' needs relating to limited inventory and special orders. Applicant's proposed service would be convenient and fill a need in the business of the company. *Complaint to existing carriers has been made about transit time on ship-*

ments to involved area, but no improvement in service has resulted.

Tulsa Trimming Supply Company, Tulsa, Okla., receives shipments from Columbus, Cornelia, Senoia, LaFayette, and Dalton, Ga., and from points in Alabama. Witness sponsored exhibit 116 covering 21 shipping documents and representing 80–90 percent of shipments received during period shown. Transit times on this exhibit range from 4 to 11 days. Transit time and consistency of service are important to witness to maintain controlled inventories and remain competitive. Service proposed by applicant would be convenient, is desired, and would be used. Has satisfactorily utilized applicant's service from other points.

Royal Crown Bottling Company, of Fort Worth, and also of Lubbock, Tex., sponsored exhibit 117, an abstract of shipping documents covering 85 representative (60 percent of the traffic) shipments, 36 of which were received at Lubbock and 49 at Fort Worth, all from Columbus, for the period February through October, 1960. Transit times on these shipments have not been satisfactory to meet witnesses' desire for controlled inventory, ranging from 4–5 days on shipments to Fort Worth, and from 7–9 days on shipments to Lubbock. Service proposed by applicant from Columbus would be convenient, is desired, and would be used. When shipments are delayed, company has tried to borrow merchandise from Dallas, which is inconvenient and a lot of trouble. *Complaint has been made to Braswell in Fort Worth and to Merchants in Lubbock concerning slow service on shipments from Columbus.* Four of the shipments shown in the exhibit which had been routed Dixie-Braswell actually moved unsatisfactorily by Dixie-Couch-Red-Ball.

Paul Fricks Supply Company, Fort Worth, Tex., ships to points in Texas, Oklahoma, and parts of Louisana and New Mexico. Shipments are brought into Fort Worth and reshipped. Shipments are received from Columbus, Dalton and LaFayette, Ga. Witness sponsored exhibit 118 covering 35 shipments (75 percent of its traffic) between October 1959 and November 1960. All shipments from Columbus have moved rail, because it had been the most dependable mode in witnesses' opinion. Transit time is important to accommodate inventory control. Transit times afforded on shipper's traffic ranges from 4–7 days by motor carrier, and average 7.76 days when handled by rail. The service presently received is slow, inconsistent and unsatisfactory to meet witnesses needs. *Has complained to shippers about slow transit time experienced.* Applicant's proposed service would be convenient and is desired.

Cooke Supply Company, Fort Worth, Tex., receives shipments from Cornelia, Dalton, LaFayette, Columbus, and Senoia, Ga. Receives three or four shipments monthly ranging from 300 to 2,000 pounds. Witness sponsored exhibit 119 covering 30 representative shipments between February and December 1960, and reflecting transit times ranging from 3.50 to 13 days. Time in transit and consistency of service are important because of inventory problems and necessity to back-order small quantities of material. Present service has been inconsistent and takes too long. Routing instructions have been violated; complaints have been made to delivering carrier—Strickland, without success. Applicant's service used outbound and found to be adequate.

Waco Trim Supply Company, Waco, Tex., receives shipments from LaFayette, Cornelia, Columbus, and Senoia, Ga. Witness sponsored exhibit 120 covering 20

shipping documents for shipments moving in the months of April, May, August, September, and October 1960, and reflecting transit times ranging from 4 to 8 days. Faster service is very important to witness and time in transit has not been satisfactory. Has tried almost every available routing without success. Tracing has been difficult. Consistency of service is of definite importance to enable control of inventory and prevent pile-up of back orders. Applicant's proposed service, including joint-line service from Cornelia and LaFayette over the Atlanta gateway, offering fourth morning service in Waco, would be of definite value, is desired, and would be used. Shipments are received all day on Saturday.

Interstate Glass & Mirror Company, Vicksburg, Miss., receives from 15 to 25 shipments per year from Atlanta, two or three per year from Decatur, Ga. Most are emergency or rush orders. Witness sponsored exhibit 121 covering 10 shipping documents moving from Atlanta (3 shipments) and Decatur (2 shipments) to Vicksburg via Dixie or Ryder in combination with Delta between February and October 1960. Time in transit is important, to keep a controlled inventory and has been unsatisfactory as performed by Dixie-Delta, and Ryder-Delta, averaging 7.97 days, to meet witness' desire. Prefers to purchase from Atlanta market because of quality merchandise, but on occasion has purchased from other markets, such as New Orleans from which adequate motor service available, to ensure prompt delivery of orders. Applicant's proposed service would be convenient, is desired, and would be used, and would result in increase in purchases from Atlanta market.

Don Drennen Motor Company, Inc., Ensley (Birmingham), Ala., receives shipments from Dallas consisting of automobile air conditioners and parts, three

or four such shipments being received each month. Emergency shipments are frequent during peak summer season. Witness sponsored exhibit 122 covering seven representative shipments moving by Transcon from Dallas to Birmingham between March and July 1960, which shows an average transit time of 4.28 days. Such service not considered adequate. Has used other motor services, such as Campbell and Roadway in past, but has not experienced consistent service by motor service and has tried using bus service even though more expensive. Transit time and consistency of service are important to control inventory. Desires applicant's proposed service, which would be convenient, and would be used.

Grinnell Company, Inc., Atlanta, Ga., makes shipments to a large number of points on the routes of applicant's present operations, including points as far west as Tucson and Phoenix, Ariz., and Los Angeles, Calif. It also ships to many points on applicant's proposed routes, particularly Gadsden, Birmingham, Tuscaloosa, Tuskegee and Montgomery, Ala., and Meridian, Miss. Shipments vary from 50 to 35,000 pounds. The company maintains its own warehouses at New Orleans, Dallas, Houston, and Los Angeles. Shipments are made from Atlanta to its warehouses at least three times a week, and to customers every day. Freight subject to damage through excessive handling in transit. To Louisiana points, has used Dixie, A–NO, and Ryder System, but does not use Ryder now because service is not sufficient. To Texas points, has used Gordons, Roadway, Transcon and Dixie but service not satisfactory. *The company has also had trouble with A–NO, Gordons, Ryder Bowman, and in a few cases with Dixie on pickup service.* Applicant's proposed service would be convenient, is desired, and would be used. Witness estimates that

business at southeastern points involving present and potential customers could be increased if proposed service is available.

J. A. Kirven Company, Columbus, Ga., receives shipments from points in Alabama, Texas, California, Louisiana, Oklahoma, Memphis, Tenn., and various other points. Witness sponsored exhibit 125 covering 31 representative shipments during November and December 1960. This exhibit depicts 2 to 4 day-service on shipments moving to Columbus from points such as Birmingham and Montgomery on the proposed routes, and transit times ranging from 3 to 14 days on shipments originating at pertinent Texas, Louisiana, and California points. Witness controls routing of traffic and has used single-line service and combination of carriers providing joint and multiple-line service, as well as some freight forwarders. Some of the carriers used are Ryder, SHE, Dixie, Benton, A-NO, GFA, Red Ball, Couch, T.I.M.E., and Gordons. Time in transit is important to witness because controlled inventory must correspond with promotional ads run on certain merchandise, and services utilized have been unsatisfactory to meet his desires. Also, consistency of service is desired. *Complaints have been made to Dixie and Benton about slow service and handling of claims,* and Ryder service is considered to be getting worse all the time. Stopped using Ryder to any extent. Applicant's existing service specified and used as connecting carrier, mostly on shipments from Texas, and on some glassware shipments from Los Angeles, and such service characterized as reliable. Applicant's proposed service would be convenient, is desired and would be used.

Justrite Envelope Manufacturing Company, Inc., Atlanta, Ga., ships to points located on applicant's proposed extended routes, as well as to many points

on applicant's present routes. Has daily shipments to points in Louisiana and Texas. Occasional shipments to Phoenix and Tucson, Ariz., and three or four times a month to Los Angeles. Has used the services of just about all the carriers. *Numerous complaints have been received from customers in Texas, Louisiana, and Oklahoma and shipper has complained to A–NO.* Transit time is important. Dixie's handling of claims has beeen unsatisfactory and details of one instance specified as representative. On shipments moving into Louisiana and Texas, difficulty has been experienced with Ryder and A–NO. *Pickup service difficulties frequently experienced with Ryder, Transcon and A–NO on shipments moving to Louisiana and Texas points.* Consistency of service is important to enable shipper effectively to compete with local specialty envelope companies in Houston and Dallas. Applicant's proposed service would be convenient, is desired, and would be used. If such service available, company considers that could increase business in areas shipped to by 15 percent ($15,000 a month):

John W. Hilverink Company, Inc., Atlanta, Ga., receives stock and special order shipments from California, Whittier being principal origin point. Most shipments are considered to company at Atlanta, but some move direct to customer. Witness sponsored exhibit 126 covering 7 representative bills between August and November 1960. Existing service by T.I.M.E. and Transcon, as reflected on this exhibit, not satisfactory because of poor time in transit, averaging 7.57 days. Applicant's proposed service desired and would be used.

Fakes & Company, Fort Worth, Tex., receives stock and special shipments from Rome and Macon, Ga., as well as from the North Carolinas. Witness

sponsored exhibit 127 covering 6 representative bills between March and October 1960, and depicting an average transit time of 10.5 days afforded by combination of carriers utilized on shipments from Rome and Macon. Tracing service has been unsatisfactory and inconvenient. *Has experienced canceled orders because of slow transportation service.* Time in transit is important. Applicant's proposed service is desired and would be used. Witness specified on routing to ship "Best Way," because carriers do not observe its routing. Has satisfactorily used applicant's service from other points:

Haneline Men's Wear, Monroe, La., receives shipments from such points at Atlanta, Bremens, and Marietta, Ga. Witness sponsored exhibit 128 covering 12 shipments between February and November 1960. Time in transit is important. Transit time service as shown on exhibit has been unsatisfactory, ranging from 5 to 7 days as afforded by 8 carriers utilized in various combinations. Consistency of service is important. Proposed service is desired and would be used. Witness did not know every combination of service now available to him.

Knight Carpet Company, Abilene, Tex., sponsored exhibit 129 covering 45 representative shipping documents, and showing various combinations of carriers used from points such as Atlanta, Rome, Albany, Dalton, Ellijay, LaFayette, Ringgold, Ga. Time in transit is very important to this witness because although the company carries large stock, there are so many different patterns and colors it is impossible to stock them all. Time in transit has not been satisfactory because it takes too long, as reflected on exhibit 129, which shows times ranging from 6 to 11 days on shipments from Georgia origins. *Customers have canceled orders when told delivery time of order to receiver would be*

10 days to 2 weeks. Buys from local distributors at Dallas or Houston, paying premium price of 20 percent over Georgia mill prices when rush orders required. Purchases in the southeast approximate $100,000 annually. If applicant's service were available, orders from southeast mills would be increased 10 to 15 percent ($10,000–$15,000) per year. Applicant's proposed service would be convenient, would help business a great deal, is desired, and would be used. Applicant's service has been satisfactorily used from Dallas to Abilene on delivery of one air freight shipment out of Atlanta. It picked up shipment on Saturday night and delivered it to receiver on Sunday morning.

Kawneer Company, Atlanta, Ga., ships to such points as Gadsden, Birmingham, Tuscaloosa and Montgomery, Ala., Jackson, Miss., with some shipments to Vicksburg, Miss., and to Monroe and Shreveport, La. Principal carriers used have been United, Campbell 66, Dixie, A–NO and Ryder. *Some Shreveport and Monroe, La., and Vicksburgh, Miss., customers were lost to Dallas competition because of motor carrier time in transit. Has received customer complaints, including recent ones from Jackson customers, about the service of all the carriers named.* Applicant's proposed service is desired and would be used to better accommodate customer's limited inventories.

Bartenfeld Electric Company, Atlanta, Ga., receives shipments from Los Angeles, the Dallas-Fort Worth area, and Jackson, Miss. Has used Transcon from Los Angeles and the Dallas-Fort Worth area. That service has been unsatisfactory because of transit time, claim service, and tracing service. Consistency of service is also important to this witness because majority of business is government business on which company has contracted completion date. Applicant's proposed

service desired, and would be used and would be convenient.

Oriental Rug Company, Waco, Tex., sponsored exhibit 130 covering 21 representative shipments between March and August 1960. This company receives shipments from Dalton, Fort Oglethorpe, Rome, and Albany, Ga., and Aberdeen, N.C. Time in transit is very important to witness because of the inventory problems and rush orders, and because of tremendous savings in purchasing from mills in the southeast rather than from the local Dallas, Houston, San Antonio or Fort Worth markets. Present service is unsatisfactory because of slow time in transit experienced, such as 9 day service on shipments from Rome, Albany and Dalton, Ga. *Complaints have been made to delivering carriers.* Unable to trace shipments satisfactorily. Company has had to make 90 percent of its purchase locally in order to be assured of receiving merchandise promptly. Applicant's proposed service would be convenient, is desired, and would be used. If applicant's service was available, would be able to buy five times the volume from the southeast mills which it presently buys. Applicant's service has been used from West Coast into Waco, and such service very satisfactory on small, as well as volume, shipments. The newly-granted Roadway authority has not been used because it is company's experience that Roadway will not bring shipments to Waco, but interlines them with Central.

Thornton Motor Company, Columbus, Ga., receives shipments from Dallas from May through August; receives approximately 200 units during such periods. Needs fastest available transportation because of limited inventory. Witness sponsored exhibit 131 covering 6 representative shipments between May and August 1960 moving between Dallas and Colum-

bus, and depicting an average transit time of 5.38 days. Transit time and consistency of service are very important. Neither has been satisfactory. *Complaints have been made to Dixie about its slow service without success.* Applicant's proposed service would be convenient, is desired, would be used, and would enable receiver to increase sales in area and at same time avoid tying up money in large inventory.

W. F. Beall Corporation, Shreveport, La., operates 23 stores in Louisiana, seven being in Shreveport and two in Bossier City. Receives shipments from Georgia and Mississippi (Atlanta and Bremer) also from Alabama (Birmingham), Virginia and the Carolinas. Has used motor carriers, railroads, and railway express. Service received is unsatisfactory. Witness sponsored exhibit 132 covering 52 representative shipments, including special promotional and emergency orders, moving between February and October 1960. Witnesses' exhibit covered shipments moving to Shreveport only, and showing such transit times as 4–6 day service on shipments from relevant Georgia points. Time in transit is important. So is consistency of service. Inconsistency of service makes it impossible to control inventory and maintain adequate stocks. Time in transit has been unsatisfactory because too slow. Desires and will use applicant's proposed service, if authorized.

Rosemont Gardens Wholesale Florist, Inc., Montgomery, Ala., also has places of business in Opelika, Ala., Macon and Thomasville, Ga. Receives shipments, including special or emergency orders relating to seasonal sales, from such points as Los Angeles, Calif., Dallas, Rosenburg and Waco, Tex., as well as other points. Witness sponsored exhibit 134 covering 22 shipments handled through the Memphis gateway, and representing 99 percent of the traffic moving between

February and November 1960. Transit time service is important and has been unsatisfactory because shipments are too long in transit, especially from Memphis to Montgomery, ranging from 3 days on shipments from Dallas to 1–8 days on shipments from Los Angeles. Consistency of service is important in maintaining inventories, and *inconsistency of service, afforded by such carriers used as T.I.M.E., Transcon, Dixie, Red Ball, Couch, A–NO, and Ryder has resulted in loss of sales.* Applicant's proposed service would be convenient, is desired, would be used, and would enable witness to increase purchases from origins mentioned above. Estimates that volume of shipments of pottery, susceptible to damage from excess handling in transit, would double from Los Angeles area if proposed service available.

Auto Color Service Company, Shreveport, La., receives shipments from such points as Atlanta, Columbus, and Dalton, Ga., and Montgomery, Ala. Witness sponsored exhibit 136 covering 12 representative movements between July and November 1960, and showing average times in transit ranging from 5 to 10 days on shipments from pertinent Georgia and Alabama origins. Witness has used the service of Ryder primarily, but not considered satisfactory because of slow time in transit. Rail service also affords slow time in transit when utilized. Transit time and consistency of service are important to accommodate customer requests. Carriers in Shreveport do not deliver on Saturday, although Saturday shipments would be received. Applicant's service used in past and found to be adequate. Applicant's proposed service is desired, and would be used.

Robert P. Stapp, Inc., Birmingham, Ala., receives shipments from such points as Atlanta, Ga., Dallas, Tex., Jackson, Miss., and Pomona, Calif. Witness

sponsored exhibit 137 covering 17 representative shipping documents between October 1959 and 1960, reflecting times in transit ranging from 3.25 days on shipments from Atlanta to 2.75 days on shipments from Jackson. Carriers used include United, West Bros., Transcon, R. C. and Dixie; also, freight forwarder service sometimes used. Air freight also is used on occasion. Shipments are received from Atlanta most every day, from Jackson about once a week, from Pomona twice a month. Time in transit and consistency of service are important to witness to coordinate limited inventory with customer requirements. Applicant's proposed service would be convenient, is desired, and would be used.

Parker Supply Company, Birmingham, Ala., Dallas receives shipments from Houston and Sweetwater, Tex., Atlanta, Jackson, and Mobile, Ala. Witness sponsored exhibit 138 covering 47 representative shipping documents between February and October 1960, and showing transit times ranging from 2–3 days on shipments from points on the proposed routes, to 5–7 days on shipments from Dallas and Houston. Shipping needs have not been met because of slow transit time service, and because no deliveries are made on Saturdays. Consistency of service is important to accommodate limited inventory, and that received from such carriers as Transcon, Ryder, West Bros., and Campbell 66, as well as, from rail carriers, has been inconsistent. Applicant's proposed service would be convenient, is desired, and would be used. If the proposed service was available, company could definitely increase its business by about 90 tons a month from Sweetwater, for example.

Trice Floor Covering, Inc., Dallas, Tex., has five places of business in Dallas. Witness sponsored exhibit 139 covering 27 representative shipments between Jan-

uary and September 1960, all from Georgia points, and depicting transit times ranging from 6 to 15 days as provided by various combinations of such carriers as Ryder, Red Ball, East Texas, GHE, Transcon, and Bowman. Receives shipments from Cartersville, Dalton, Fort Oglethorpe, Lyerly, and Ringgold, Ga. Buys carpet locally from Dallas warehouse on rush shipments, but this increases cost. Time in transit service experienced is not satisfactory, and is important because merchandise sold when order placed for it. In addition to Dallas stores, the company has four stores in Houston and two in Fort Worth. If applicant's proposed service was available it would be convenient, is desired, and would be used on shipments to all stores at all points. Applicant has been used on shipments from West Coast and such service is consistently dependable. If services was available purchases from the mills at the indicated Georgia points could be increased from 5 to 10 percent.

McAdams Carpet Company, Montgomery, Ala., receives frequent shipments from such points as Atlanta and Dalton, Ga., Dallas, Tex., and through the Atlanta gateway from the Carolinas. Witness sponsored exhibit 140 covering 19 representative shipments between January and October 1960, and depicting average on transit time shipments from Atlanta, *inter alia,* of 2.63 days. Time in transit and consistency of service are important to enable witness to maintain controlled inventory and to schedule dates for carpet installation, and that received has not been satisfactory from such carriers as Ryder, A-NO, Dixie, Red Ball, and Couch, to meet witnesses' desire. Has also experienced tracing difficulties. Applicant's proposed service is desired, would be convenient, and would be used. Would like Saturday deliveries. If

proposed service available, witness considers that it could increase business.

Trice Floor Covering, Inc., Fort Worth, Tex., sponsored exhibit No. 141 covering 10 representative shipping documents, and showing use of various combinations of carriers on shipments from Dalton, Ga., moving between February 1960 and January 1961. The exhibit reflects an average transit time for such shipments of 8.06 days. Shipper's routings are frequently breached. Time in transit and consistency of service are important. Purchases at Dallas warehouse to obtain prompt delivery service but has to pay premium price. *Has complained about slow service received to Red Ball and to East Texas.* Desires applicant's proposed service to obtain good service out of preferable Dalton market.

Rosen's Store for Men, El Paso, Tex., receives shipments from such points as Bremen, Marietta, Camila, and Dublin, Ga., and points in the Carolinas. Witness sponsored exhibit 142 covering 28 shipping documents (97 percent of its traffic) from 1959–1960, 16 of which moved Railway Express. Transit times afforded by such motor carriers as T.I.M.E., GHE., Barnes, and Southeastern, in various combinations, on shipments from relevant Georgia origins average 7.75 days, as shown on this exhibit. Does not like to use Railway Express because of cost, but has done so in many cases because of time involved. Time in transit is important for competitive reasons and to accommodate planned promotions. Applicant delivers in El Paso on Saturdays, which Railway Express does not do. Applicant's proposed service would be convenient, is desired, and would be used. Applicant's service from West Coast used and found to be reliable.

Ellis Piston Sales, Inc., Shreveport, La., receives shipments from Birmingham, Ala., and from North

Carolina points. Witness sponsored exhibit 143 covering 7 representative shipments moving between April and December 1960 from Birmingham and Charlotte, N.C., represents 75 percent of such traffic) by various combinations of carriers, and in single-line service. Transit time on shipments from Birmingham has averaged 3.88 days, according to this exhibit. Time in transit and consistency of service are important because business built on service. Receives shipments on Saturdays, and some Shreveport carriers do not deliver on Saturdays. Applicant has handled outbound shipments destined to Birmingham and Charlotte, and such service satisfactory. Applicant's proposed service would be convenient, is desired, and would be used.

Cen-Tennial Gin Supply Company, Dallas, Tex., sponsored exhibit 144 covering 48 (practically all) shipments, all from Columbus, for the period September, 1959, through September, 1960. About 40 percent of shipments are what might be called emergency. The underlying bill of one such shipment listed on the exhibit was marked "emergency shipment, rush, rush, rush," and the shipment took 8 days in transit. Others similarly labeled took 4 to 7 days in transit. The average transit time on the shipments covered by the exhibit was 6.53 days, as afforded by Dixie-Transcon, Herrin, Couch, and Red Ball. Time in transit is very important. Various routings have been tried in an attempt to get better service. No satisfactory service has been found because shipments are too long in transit. *Complaints made to carriers about time-in-transit provided, but no consistency of service has been found.* Applicant's proposed service would be convenient, is desired, and would be used. Applicant's service satisfactorily utilized from West Coast.

Blackman's Laundry, Alexandria, La., receives shipments from such points as Atlanta, College Park, and Griffin, Ga. Witness sponsored exhibit 145 covering 15 representative shipments, all moving to Alexandria between July 1959 and June 1960, and afforded an average transit time of 5.62 days by such carriers as Dixie, Couch, and Ryder singly and in various combinations. Plant employs 135 people. Time in transit and consistency of service are important because of rush orders and customer demands. Neither has been satisfactory. Some tracing difficulties experienced. Desires applicant's proposed service and would use it. Applicant's service has been used on traffic from other points and found to be satisfactory.

Ardis Ritchie Grocery Company, Shreveport, La., receives shipments from Chamblee, Eatonton, Athens, Porterdale, and Atlanta, Ga., also Hickory, N.C., and Selma, Alabama. Witness sponsored exhibit 146 covering 21 representative shipments moving by various carriers between December 1959 and September 1960, and showing transit times ranging from 4 to 12 days. Different combinations of carriers been used in an effort to get better service. Time in transit is important, and if applicant's proposed service was available, it would be convenient and would be used. Applicant's service used satisfactorily out of Dallas and Memphis. Its service specified on some of traffic shown on exhibit 146, but such routings breached. *Complaints made to Couch without improvement in service.*

Peerless Variety Store, Vicksburg, Miss., receives freight from relevant points in Georgia, Alabama, and the Carolinas. Carriers used include Dixie, Delta, Gordons, Transcon, Ryder, Cole and United. Witness sponsored exhibit 147 covering all (22) shipments from May through December, 1960, and showing tran-

sit times ranging from 6 to 12 days on shipments from Georgia and Alabama origins. Transit time and consistency of service is desired and would be used. *Sales are lost by being out of merchandise,* and heavy inventory must be carried. Applicant's service used satisfactorily on traffic moving from west.

Reeder and McGaugher, Inc., Auburn, Ala., receives shipments from such points as Atlanta, Dallas, Los Angeles and Memphis. Various carriers and combinations thereof have been used. Witness sponsored exhibit 148 covering 22 shipments (75 percent of the traffic) moving between February 1960 and January 1961, most of which were from Atlanta, Ga. that were afforded an average transit time of 2.59 days, with other shipments from Dallas, Tex., (5–7 days), Los Angeles (6 days), Glendale, Calif. (7 days), and Memphis, Tenn. (3 days). Time in transit and consistency of service are important. *Has lost business because of slow service received from such carriers as Dixie, Baggett, West, T.I.M.E., Transcon, and Ryder. Complaints made to such carriers but service has not been improved.* Applicant's proposed service would be convenient, is desired, and would be used to accommodate limited inventory and handling of special-order shipments. If available, witness estimates that it could increase purchases at Atlanta, Los Angeles, and Dallas by about 10 percent ($3,000).

L. B. Foster Company, Doraville, (Atlanta), Ga., receives shipments from such points as Baton Rouge, La., Birmingham, Ensley, Bessemer, and Opelika, Ala., and Houston and Lone Star, Tex. Witness sponsored Exhibit 149 covering 15 representative shipments moving between October 1959 and September 1960, showing an average time-in-transit provided on shipments from relevant Alabama points of 3 days. Time in transit is important because it means the

difference between getting or losing the business. Most of company's customers are concerned with government traffic and jobs are of definite time nature. Applicant's proposed service from Texas, Louisiana and Alabama points would be convenient, is desired, and would be used. Has frequent outbound shipments moving to points on applicant's proposed routes to points in Alabama, Mississippi, and Georgia. On outbound shipments, has used Eagle, Deaton, United and Ryder. *Has experienced difficulty in securing pickup service on outbound traffic. This has been the case with Dixie, Deaton, Eagle, Superior and Ryder.* Experiences tracing difficulties from Ryder. *Complaints have been received from customers on these outbound shipments, and complaints have been made to the motor carriers rendering the service, without improvement in service.* Witness picked 14 bills out of approximately 60 bills to sponsor at this hearing, because balance were either rail shipment or shipments from points not here involved.

Madison Furniture Industries, Canton, Miss., receives special, stock, and "rush" shipments from such points as Columbus and Chamblee, Ga., Montgomery, Ala., and the Carolinas, moving through the Atlanta gateway, Witness sponsored exhibit 150 covering 241 shipping documents, representing all traffic of this witness, for the period January through December, 1960. Time in transit is important to coordinate inventory with orders. The service which has been received is not satisfactory in scheduling its operations to make the plant operate efficiently. Average transit times on the shipments received from the above-named Georgia and Alabama origins, according to exhibit 150, have ranged from 5.34 to 7.00 days. *Complaints have been made to Delta and Campbell 66 on account of the slow service on inbound shipments.* Inquiries

have been made of Dixie, and shipments found lying on the dock. Ships outbound to a number of Alabama and Georgia points; some through the Atlanta gateway to the Carolinas. Outbound shipments are made to the Georgia and Alabama points daily. On outbound shipments, the services of Delta, Campbell 66, and applicant have been used, and the latter's service on westbound shipments is characterized as dependable and reliable. Gordons only comes to Canton, Miss., when it has an approximate truck load, and has no terminal at Canton. Desires applicant's service, both inbound and outbound. Has competitors located in the Carolinas. *Receives complaints from Birmingham salesmen on average of one every 2 weeks concerning transportation difficulties.*

York Manufacturing Company and F. N. Grant & Sons, York, Ala. Grant receives shipments from such points as Atlanta, Bremen and Calhoun, Ga., Memphis, Tenn., New Orleans, La., and San Antonio, Tex. York receives shipments from such points as Meridian, Miss., Atlanta, Ga., and Memphis, Tenn Witness sponsored exhibit 151, for account of F. N Grant, covering 33 representative shipping documents (50 percent of the shipments for this period), all moving to York, Ala., from such points as Atlanta, Bremen and Calhoun, Ga., Memphis, Tenn., New Orleans, La., and San Antonio, Tex., between January and October 1960, and showing average transit time ranging from 4.50 to 8.50 days on shipments from pertinent Georgia origins. Also, witness sponsored exhibit 152 covering all (10) shipments for the account of York Manufacturing Company, between June and October 1960, and depicting, *inter alia,* average transit time of 6 days on shipments from Atlanta handled by Dixie. Applicant's proposed service would be convenient to help witness take advantage of short term

discounts prior to receipt of goods, so that goods could be sold before they have to be paid for, a convenience because they operate on limited capital. *The proposed service is desired, and would be used. Complaints have been made about present time in transit provided and unsatisfactory pickup service to carriers, including Dixie and Baggett.* In order to get *pickups,* a driver who is delivering must be stopped, or Dixie must be called at Meridian, or Baggett at Tuscaloosa. It is never known when traffic is going to be either picked up or delivered. Has investigated available service at York but none found to meet its needs.

Mill & Textile Supply Company, Inc., Birmingham, Ala., receives shipments from such points as Atlanta and Rome, Ga., Dallas, Fort Worth and Houston, Tex., and New Orleans, La. Requires emergency orders to be shipped from those points about twice a week. Witness sponsored exhibit 153 covering 92 shipping documents between October 1959 and December 1960, and representing 90 percent of shipments received during period covered. Transit time is important to accommodate limited inventory. That being received is not satisfactory, as shown the witnesses' exhibit, reflecting, *inter alia,* average transit times on 41 shipments from Atlanta ranging from 2 to 5 days. On 21 shipments from Dallas and Fort Worth, the average time in transit was 5.17 days. Consistency of service is important and has not been received. Applicant's proposed service would be convenient, is desired, and would be used.

Stag Men's Shop, West Monroe, La., has two stores in West Monroe. Receives special and stock shipments from such points as Bremen and Marietta, Ga., and Lineville, Ala. Witness sponsored exhibit 154 covering 15 representative shipments moving between September 1959 and October 1960, and showing transit times

ranging from 3 to 15 days. Transit time and consistency of service are important for maintenance of inventory and to take advantage of short term discounts on goods ordered. *Complaint has been made to Couch and Ryder about the service, with no improvement thereafter.* Applicant's proposed service would be convenient, and is desired. Anticipates increase in business by 15–25 percent if proposed service made available. Applicant's existing service used from other points satisfactorily.

House of Carpets, El Paso, Tex., ships from such points as Cartersville, Dalton and Chatsworth, Ga. Witness sponsored exhibit 155 covering 33 representative shipments moving by various combinations of carriers from Cartersville, Dalton, and Chatsworth to El Paso between November 1959 and August 1960, and reflecting about 50 percent of all traffic received during this period. The average transit time afforded on shipments from Cartersville has been 8.73 days. Time in transit and consistency of service are important to control inventory and meet needs of customers. Neither have been received by the use of existing carrier services, and, consequently, the company is not able to schedule its work to meet the needs of its customers. Larger stock is carried than desired because of poor transit time, and discounts and *customers' orders have been lost because of inadequate transportation service.* If applicant's service was available, company could increase business from the Georgia mills by about 7 percent and cease purchasing from Dallas market at premium price. Transcon-Whitfield have been used, and the time element is substantially the same as that received when T.I.M.E., is used or when Ryder-Texas-Arizona is used. *Complaint has been made to T.I.M.E.* Applicant's proposed service would be convenient, is desired, and would be used.

Noble Recapping Company, York, Ala., receives shipments from such points as Atlanta and Chamblee, Ga., Dallas, Tex., and Memphis, Tenn. Witness sponsored exhibit 156 covering all (18) shipments between March and December 1960, and depicting transit times ranging from 6–7 days on shipments from Memphis, to 6 days on shipments from Atlanta. Time in transit is important to witness to control inventory, and various combinations of carriers have been used, but service not satisfactory. Hall Motor Service renders service to York only once or twice a week and cannot be used. Saturday deliveries are desirable. Transit time and consistency of service are important. Intends to make purchases in future from Los Angeles and Dallas if adequate motor service available. Applicant's proposed service would be convenient, is desired, and would be used.

Drake Saw Corporation, Jackson, Miss., makes shipments to such points as Atlanta, Columbus, Rome, East Point, La Grange and Marietta, Ga., Birmingham, Montgomery, Selma and Tuscaloosa, Ala. Shipments are made once a week to accounts at such points. Shipments run from 100 to 200 pounds. Transit time is important and overnight service is desired. Consistency of service is important. Applicant's proposed service would be convenient, is desired, and would be used. Would assist in expanding the territory served and thus fill a business need. Business could be increased up to 50 percent with a better transportation service. Shipper was using air freight and bus on most of his shipments at present in effort to obtain expeditious service, although freight charges are adverse factor in such instances.

Church & Stagg Office Supply Co., Birmingham, Ala., receives shipments including special orders from such points as Alexandria, La., Laurel, Miss., Dallas,

Tex., and from the Los Angeles area, including Emeryville, Calif. Witness sponsored exhibit 157 covering 16 shipping documents between January and November 1960, representing 50 percent of shipments for period covered, and showing transit times ranging from 4–5 days on shipments from Dallas to 8 days on shipments from Los Angeles. T.I.M.E., in transit service experienced has been unsatisfactory to witness. Applicant's proposed service would be convenient, is desired, and would be used. Transcon was used on shipments out of Emeryville at the suggestion of the manufacturer. *Complaint has been made to the manufacturer to find a better service.*

A & M Wholesale Company, Dollar Store and Southern Historical Publications, Natchez, Miss. A & M receives merchandise from such points as Atlanta, Newnan, Athens, Blackshear, Waycross, Winder, Dalton, Flowery Branch, and Griffin, Ga., and from Alexander City, Reform, Greenville and Florala, Ala. Has used various combinations of carriers. Witness sponsored exhibit 158 covering 29 representative shipments between April and November 1960. The service is unsatisfactory because inconsistent and too long in transit. For example, shipments from Atlanta have been subjected to an average transit time of 5.50 days. Because of such service, consignee cannot maintain proper inventory, and also cannot take advantage of short term discounts prior to receipt of merchandise on 90 percent of shipments. Applicant's proposed service would be convenient, is desired, and would be used. If better service was available estimates could increase gross sales by 20 percent ($60,000 a year). Same situation applies as to each of the businesses represented by the witness. Applicant's service from other points has been satisfactorily used.

Montgomery Serum Company, Montgomery, Ala., receives rush and regular shipments from such points as Dallas, Fort Worth, El Paso, Garland, Houston, Waco, Belton, Brownwood, Greenville, Laredo, Rockwell, San Angelo, and Yoakum, Tex.; also from Jackson, Miss., and San Jose, Calif. Witness sponsored exhibit 159 covering 30 shipments moving between May 1960 and January 1961, and representing 85–90 percent of all shipments, for period covered. This exhibit reflects average transit times, *inter alia,* of 4 days on shipments from Dallas and Fort Worth, and 11 days on shipments from El Paso. Time in transit and consistency of service important to keep inventory supplied and special orders coming in on time, and to compete effectively in area. Applicant's proposed service would be convenient, is desired, and would be used. *Has utilized all available services in area without obtaining satisfactory service on time in transit.*

Len-For Products Company, Dallas, Tex., makes shipments to such points as Meridian, Miss., Birmingham and Salem, Ala., and Atlanta and Columbus, Ga. Shipments are made two or three times a week. Mostly Transcon has been used. *Specified complaints have been received from customers about the transportation service, particularly from named Birmingham and Atlanta, customers on shipments handled by Transcon.* Witness sponsored exhibit 160 covering 7 representative shipments from Dallas to Atlanta, all moving by Transcon, between June and October 1960, and showing an average transit time of 8 days. *Complaint was made to Transcon about service to Birmingham and Atlanta without success. Complaints have been received from customers in Birmingham, Meridian, and Selma.* Applicant's proposed service would be convenient, and would be used. Witness considers

that business in area would be increased if such service available.

National Supply Division of Armco Steel Corporation, Dallas, Tex., makes shipments from Atlanta and Birmingham to a very large number of Texas, Louisiana, Mississippi, and New Mexico points. Shipments range from 66 to 100 pounds, and are either to replenish stock or for immediate sale to customer. Witness sponsored exhibit 161 covering 27 representative shipments, all originating at Atlanta and Birmingham, and moving between December 1959 and October 1960, by the use of various combinations of carriers. Routings are switched from time to time in an effort to obtain the best service. Time in transit between the points indicated has not been satisfactory to meet witnesses' needs, ranging from 5 to 8 days on shipments from Atlanta to Shreveport, and from 6 to 8 days on shipments from Birmingham to numerous Texas destinations. Applicant's proposed service would be convenient, is desired, and would be used.

Holiday's Department Stores, operates stores at Minden, Monroe, Farmersville, Marksville, New Roads, Pineville, Springhill, Ringgold and Coushatta, La. Receives shipments at all stores from various Georgia and Alabama points including Atlanta, Columbus, Montgomery, and Rome, and also receives shipments from the Carolinas through the Atlanta gateway. All feasible combinations of carriers from various Georgia and Alabama points to all stores have been used. Witness sponsored exhibit 162 covering 156 representative shipments between December 1956 and October 1960, and depicting transit times, *inter alia,* ranging from 5-10 days on shipments from the Alabama and Georgia origins specified above to the Louisiana destinations. Time in transit and consistency of service are important for various assigned rea-

sons, such as (1) competitive standing, (2) taking advantage of discounts on invoices after receipt of shipments, (3) coordinating inventory with promotional advertising, and (4) require Saturday deliveries. Such service is not received on a dependable basis. Tracing of shipments also has been difficult. Both Couch and Ryder take the shipments to Shreveport and then bring them back to Minden. Applicant's proposed service would be convenient, is desired, and would be used. Applicant has been satisfactorily utilized from the west. *Complaints to local delivering carriers have not resulted in improved service.*

Natchez Photo Company, Natchez, Miss., receives special and stock shipments principally from Atlanta and Chamblee, Ga. Witness sponsored exhibit 163 covering 18 representative shipping documents showing service from Atlanta via Dixie and Delta between November 1959 and November 1960 with an average transit time of 5.55 days. Time in transit is important because the business is run on service, and time saved in shipment means a lot to the business. Applicant's proposed service would be convenient, is desired, and would be used. Consistency of service is important and has not been obtained from Atlanta comparable to that received at Dallas from applicant. *Complaints made to Delta and Couch about service but no improvement.* Purchases in Atlanta would be increased by at least 10 percent, or $1,000 a month, if same service can be obtained out of Atlanta that is available by applicant presently out of Dallas.

Peterson Sales Company, Inc., Shreveport, La., sponsored exhibit 164 covering all (10) shipments inbound from Birmingham and Atlanta between February and December 1960. These shipments were handled by Ryder and subjected to average time in transit of 3.50 days. Time in transit is important.

Shipments shown on exhibit are stock, and special orders. Time in transit is not satisfactory because of delay. Routings are specified, and Ryder used because of more or less direct service. Applicant's proposed second morning service from Atlanta and Birmingham would be of value and is desired. Consistency of service is important, and consistent service has not been obtained. Company is open to receive shipments on Saturday. Investigation has been made as to present service, and available interchange service takes from 4 to 6 days. Ryder and Couch are only carriers that have solicited traffic from points named.

Walpole Tire Service, Ruston, La., sponsored exhibit 165 covering all (24) shipments from Birmingham and Gadsden to Ruston between August 1959 and October 1960, and depicting an average transit line of 6.03 days. Witness has right to route shipments. Time in transit important to reduce inventory, accommodate special orders shipments, and give better service to customers. Most shipments shown on exhibit were special orders. Time in transit not satisfactory because too long. Applicant's proposed second morning service from Gadsden to Ruston would be a convenience, is desired, and would be used. Would help reduce invenfory and satisfy customers. Ryder has been used because it affords a direct service, and direct service is preferred for shorter delivery time, but Ryder's service is too slow. Consistency of service is important and has not been obtained, which is an inconvenience. Braswell has been used and gives good service from other points. If application is granted, shipments will move by applicant.

Independent Lock Company, Selma, Ala., makes shipments to Dallas, Tex., New Orleans and Baton Rouge, La., San Francisco, Los Angeles and San Jose, Calif., Meridian, Miss., Atlanta and Macon, Ga., and

to points in North Carolina. Shipments made to wholesalers and automobile assembly plants. Carriers used out of Selma are Baggett, Dixie, Jack Cole and Mercury. Shipments usually made weekly, and automobile locks shipped daily. Shipments moving easterly routed by Mercury. *Complaints received from named consignee at Los Angeles about Mercury's transportation service, and complaint in turn made by shipper to Mercury, but nothing done to remedy situation. Complaints recited about slow service received on four specified occasions during October and November, 1960 by this customer* is representative of undependable motor service presently available. Witness supporting application to obtain expeditious and dependable single-line service. Proposed service would be a convenience, is desired, and would be used.

Sanitary Linen Service, Odessa, Tex., sponsored exhibit 169 covering all (33) shipping documents from Atlanta and Griffin, Ga., and various points in North Carolina and South Carolina between October 1959 and December 1960. Shipments are not routed but shippers are requested to furnish best routings and fastest service, and witness informed that available services afford about the same type of service. Time in transit and consistency of service are important. *Complaints have been made to carriers delivering at Odessa, such as to Merchants Fast Motor Lines.* Transit time shown on exhibit not satisfactory because too slow, ranging from 4 to 11 days on shipments from Atlanta and Griffin. Discounts cannot be taken, and larger inventories required than desired. Company receives shipments on Saturdays. Applicant's proposed service would be a convenience is desired, and would be used. On account of slow transit time, shipments, especially special orders, have to be obtained out of Houston warehouse at cost of

6 to 7 percent more, which is not desirable. Prefers to order from southeastern mill points. Braswell has been used from California and provides a dependable and reliable service.

Tucker's Carpets & Rugs, Baton Rouge, La., sponsored exhibit 170 covering 77 representative shipments from various points in Georgia and Alabama, including Atlanta, Birmingham, and Cartersville, moving between October 1959 and October 1960. Transit time shown on the exhibit is not satisfactory, averaging 5.91 days on shipments from Birmingham, and 5.70 days on shipments from Atlanta for example. An effort has been made to obtain better service, but no improvement has been experienced. Carriers used include A–NO, Garig, Dixie, England, Ryder, Bowman, Couch, Roadway and Murdock, among others, singly and in various combinations. *Complaint has been made to Ryder and T.S.C.* Transit time and consistency of service are very important to retain customers and because 50 percent is special order; and also because of inventory, and in order to schedule work. *Complaint has been made to local management of freight lines but a dependable and reliable service has not been found.* The proposed service of applicant would be a convenience, is desired, and would be used. Single-line service preferred over multiple-line service for better tracing and for faster movement of traffic. Tracing experience unsatisfactory. Discounts cannot be taken at times, which is inconvenient because money is tied up longer. *Customers have been lost because of transportation service.* Is estimated that a 25 percent increase in volume could be obtained with better service. Shipments would be received on Saturdays.

Southern Precision Pattern Works, Irondale (Birmingham), Ala., sponsored exhibit 171 covering

16 representative shipments moving inbound from such points as Atlanta, Fort Worth and Tyler, Tex., between October 1959 and December 1960. From these origins, shipments have been subjected to transit times ranging from 2–5 days, which is considered excessive. Time in transit on inbound shipments is important because of deadlines and government contract jobs. Inbound routing is left up to customers because they know what services are available from points served. Shipments are made outbound at rate of one a week to Texas and some shipments to Los Angeles. Shipments are received and made on Saturdays. The proposed service of applicant would be convenient, is desired, and would be used. *Shipments lay on Ryder's dock for as much as 2 days sometimes before shipped out.* Tracing by Ryder has been poor, and by Transcon fair. *Complaints have been made to these carriers about their services for the past year without any improvement thereafter.* Consistency of service is important and has not been obtained.

Dina Paper Company, Fort Worth, Tex., sponsored exhibit 172 covering 29 inbound (75 percent of the total) shipments, primarily from Atlanta and Birmingham, between December 1959 and August 1960. Time in transit shown is not satisfactory, ranging from 3 to 7 days, and averaging 5.36 days. Second day service is needed out of Birmingham, Columbus, and Atlanta to accommodate customer requirements. Proposed service would be a convenience, is desired, and would be used. Tracing service has been poor with existing carriers. Strickland and Herrin do not have terminals in Fort Worth. Company open to receive shipments on Saturday. Consistency of service is important and has not been found. Applicant's service utilized from other points and characterized as dependable.

Oliver H. Van Horn Company, Shreveport, La., sponsored exhibit 173 covering 20 representative inbound shipments moving from such points as Birmingham and Rome between January and December 1960. On about half of the shipments shown in exhibit, transit time is satisfactory. Otherwise, transit times range from 4 to 6 days on shipments from relevant Alabama and Georgia origins. Time in transit and consistency of service are important to control inventory and meet customer requirements. Applicant's proposed service would be convenient, is desired, and would be used.

J. J. Hanley Plumbing & Heating Company, Vicksburg, Miss., sponsored exhibit 174 covering all (14) shipping documents between May and July 1960, on shipments to Vicksburg, primarily from Anniston and Birmingham, Ala., and from Rome and Atlanta, Ga., and depicting transit times ranging from 5 to 10.50 days. Such transit times not satisfactory, and *complaints have been made to carriers utilized, such as Ryder, Delta, Dixie and Campbell 66, particularly to Delta.* Slow transit time causes company to lose money. Consistency of service is very important. Tracing service has not been obtained in time and manner desired. Applicant's proposed service would be of value and would be used.

Dealer Associates, Inc., Minden, La., sponsored exhibit 175 covering six representative inbound shipments between August and November 1960, and reflecting average transit times ranging from 4 to 15 days on shipments from origins named below. Six to eight shipments a year are received from, *inter alia,* Centre and Gadsden, Ala., and Columbus. On large shipments, company trucks are used, but if the proposed application is granted applicant would be used in preference to company trucks. Various carriers

from Centre and Gadsden, Ala., Columbus, Ga., and from North and South Carolina points have been tried, and a consistent, dependable and reliable carrier service has not been found. Applicant is the only carrier that has a representative in Minden, and if the applicant's service was available it would be a convenience, is desired, and would be used.

Southeastern Sanitary Supply Company, Montgomery, Ala., sponsored exhibit 176 covering 20 representative shipments between March 1959 and September 1960, all to Montgomery, primarily from Atlanta and Baton Rouge, and Georgia points other than Atlanta. Time in transit and consistency of service are important in order to keep down inventories, and time obtained has not been satisfactory, as reflected on witnesses' exhibit showing, for example, an average transit time of 3.44 days on 9 shipments from Atlanta handled directly by A–NO. *Complaint has been made to Dixie, BC, and A–NO about shipments being too long in transit, but no improvement in service.* Tracing service has not been obtained in time desired. Single line service is preferred. If the proposed service were available, it would be convenient, is desired, and would be used.

Froug Company, Inc., Tulsa, Okla., has three retail department stores in Tulsa, and is constructing another. Witness sponsored exhibit 177 covering 86 representative inbound shipments between April and September 1960, including 12 from Alabama, subjected to transit times ranging from 3.33 to 7 days; 25 from Georgia, afforded transit times ranging from 3.66 to 12 days; and 3 from Mississippi, averaging 3.66 days in transit. All shipments are routed by the company. Time in transit has not been satisfactory. Time in transit and consistency of service are important to accommodate promotional sales and controlled inven-

tories. No service has been found that can be regarded as dependable or consistent. Tracing services of T.I.M.E. and Transcon have been unsatisfactory. *Complaint has been made to these carriers in regard to tracing and transit time.* Routings have been changed to get better service. Single-line is desired over multiple-line service. Roadway is not specified, because it has been used previously and its service was not considered satisfactory.

Kennington Company, Jackson, Miss., sponsored exhibit 178 covering 337 representative shipments from various pertinent points in Georgia and Alabama, as well as, from points in North Carolina and South Carolina, between November 1959 and October 1960. Time in transit and consistency of service are important, and service shown on the exhibit is not satisfactory, reflecting average times in transit on 103 shipments from Atlanta, Chamblee, Birmingham, Fairfax, Columbus, La Grange, Marietta, and Rome, ranging from 2 to 7 days, and averaging 4.34 days. Company designates through-routing on all purchase orders. Various routings have been tried in an effort to obtain the best transportation service possible with little success. Company also uses rail service, on all large orders, when time in transit is not of the essence. Faster service is desired in order to carry smaller inventories, accommodate special order requests, and to avoid excessive handling of freight, reduce claims, shortages, and damage, as well as to effectively meet competition. Proposed service of applicant, including contemplated Saturday deliveries element, would be a convenience, is desired, and would be used. Carriers serving Jackson include Dixie, Ryder, and West Bros., and *complaints have been made to such carriers in regard to their transit-time service, but no improvement has been experienced thereafter.* Only recently,

since the instant application was filed, has company experienced some improvement in these services. Delay also is experienced in tracing. Applicant's service has been used from other points, and is characterized as dependable and reliable.

Gamma Industries, Baton Rouge, La., sponsored exhibit 179 covering 32 representative inbound shipments from Georgia and Alabama points, primarily from Atlanta, for the period February 1960 through January 1961. Average transit time on shipments from Atlanta have ranged from 3 to 10 days. Transit time is important because the lading (film) is perishable and sensitive to temperature, and because inventory is kept as low as possible. Several carriers have been used and service is still unsatisfactory. *Complaint has been made to suppliers to find other routing, and service still has not improved.* Complaint has been made also to Ryder, but this carrier's service has not improved. Proposed service of applicant would be of benefit, is desired, and would be used. Applicant has been used satisfactorily to handle inbound California traffic. Consistency of service is important, and a dependable and reliable service out of Atlanta has not been found. As a result, this receiver often has to purchase in the New Orleans or Shreveport markets, which is an inconvenience and an expensive factor.

Standard Auto Parts, Montgomery, Ala., sponsored exhibit 180 covering seven shipments between April and October 1960. Shipments are received from Dallas, Meridian, and Tulsa. Time in transit and consistency of service are important for smaller inventories, better customer service, and smaller financial outlay. Applicant's proposed service would be a convenience, is desired, and would be used. Carriers used are AAA, A–NO, and Dixie, but they provide slow transit times, as reflected in the witnesses' exhibit which shows aver-

age times ranging from 3.50 days on shipments from Dallas, to 5 days on shipments from Tulsa.

Plantation Patterns, Inc., Birmingham, Ala., makes shipments from Birmingham to many points on applicant's present routes, such as New Orleans, Baton Rouge, Shreveport and Monroe, La., Houston, Dallas, Fort Worth, El Paso and San Antonio, Tex., Phoenix and Tucson, Ariz., and Los Angeles, Calif. Shipments are made daily, ranging from 100 to 300 and 400 pounds. Carriers being used are Transcon into northern part of Mississippi, Arkansas, Oklahoma and Kansas, West Bros. into Missisippi, and Ryder and Dixie into Texas. To Phoenix and Tucson and the West Coast, carloading service has been used. Transit time is important to accommodate customers' promotional sales, and *complaints have been received from customers at New Orleans and Monroe, on shipments made by Ryder. Ryder has been used into southern Texas and Dixie into Dallas and Fort Worth, and complaints have been received from named customers at these points on the service.* An example of poor service was cited concerning Dallas-destined shipments for named customer in January 1961, moving via Dixie-Red Ball and taking 6 days in transit. A consistent and dependable motor carrier service is desired. The proposed service would be a convenience, is desired, and would be used.

Tex-Tuft Products Company, Inc., Rome, Ga., makes shipments outbound daily to points in Texas, weighing from 500 to 600 pounds. Shipments made to Phoenix, Ariz., every day or two, to El Paso, Tex., once a week, and to Dallas, Fort Worth, Houston, New Orleans and Baton Rouge weekly or once every two weeks. Warehouse stocks carried at Fort Worth and Los Angeles. Most shipments are customer-routed. Shipper has routed by RCA and A–NO, and Dixie

and Herrin into New Orleans. T.I.M.E. and Transcon are used to Phoenix, and shipments to warehouse in Fort Worth are on leased vehicles. Time in transit important because of competition. Proposed service would fill a need in the business, would be convenient, and would be used, and leased truck operation would be discontinued. Also, the warehouse at Fort Worth would be discontinued, and company could open up western areas. Fort Worth warehouse requested any routing except Ryder because of consistently poor service rendered by this carrier.

S & S Suppliers, Inc., Phoenix, Ariz., sponsored exhibit 181 covering 27 representative shipments from Columbus, and various points in the Carolinas, between November 1959 and September 1960, handled by freight forwarder services, and by such carriers as Ryder, GHE, Transcon, T.I.M.E., and Texas-Arizona. Shipments from Columbus were subjected to transit times ranging from 7 to 12 days. Shipments received about three times a week and are routed. Time in transit and consistency of service are important because of short term discount dates, emergency order shipments, and service to customers. Proposed service of applicant would be a convenience, is desired, and would be used; and would be a great advantage to company in way of service. Purchases in area would be increased around 25 to 50 percent. *Complaints are made constantly to above-named carriers about service,* and different routings are tried to get better service. It is difficult to get tracing information.

Cowan Supply Company, Montgomery, Ala., sponsored exhibit 182 covering 18 representative inbound shipments, primarily from La Puente, Calif., (in the Los Angeles commercial zone) between January and December 1960, handled by various combinations of

motor carriers, and reflecting transit times ranging from 8 to 10.75 days on shipments from the California origin. Shipments are also received by rail. Transit time and consistency of service are important. Applicant's proposed service would be a convenience, is desired, and shipments would be routed over such service. Shipments from Chicago would be routed by applicant from Atlanta to obtain overnight service to Montgomery. *Complaints are not made to carriers because it has not obtained results when complaints made in past.* Proposed service would increase business from Los Angeles area. No service from California has been found that could be relied upon for consistency. Proposed service would reduce inventories.

Climatic Air Inc., Dallas, Tex., makes shipments to Birmingham, Tuscaloosa, Memphis, Atlanta, and Columbus, ranging in weight from 100 to 2,500 pounds. Modes of transportation utilized are bus, air freight and truck. Red Ball and three or four other carriers are used to points mentioned. During months March through July, shipments go out two or three times a week, and company routes most of the shipments. Transit time and consistency in service are important. Customers want shipments fast, and service has not been in manner desired. *Complaints have been received from customers,* and warehouse is being established in Atlanta to give better service to customers. Proposed service would be a convenience, is desired, and would be used. Single-line service preferred to avoid interline delays and minimize tracing difficulties. Tracing information has not been obtained from Red Ball. It is not convenient to use bus or air freight because of time and expense involved.

Feiner's Men's Toggery, El Paso, Tex., sponsored exhibit 183 covering 17 representative inbound ship-

ments between October 1959 and May 1960, from Bremen, Ga., and points in South Carolina, and reflecting average transit times on shipments from Bremen ranging from 6.25 to 8 days. Transit time and consistency of service are important. Carriers used are T.I.M.E., Texas-Arizona, Braswell, Sunset, and all other carriers that come into El Paso. Various carriers have been tried in order to improve service, but without success. Applicant's proposed service would be a convenience, is desired, and would be used, to eliminate shortages and delays, and to reduce inventories. On shipments originating at points beyond Atlanta, shipments would be routed to applicant at Atlanta. Braswell's service has been used and it is dependable and reliable. Single-line is desired over multiple-line service for the reasons specified above. Company is open to receive shipments on Saturdays.

Evans & Son Clothiers, West Monroe, La., sponsored exhibit 184 covering 26 representative inbound shipments moving between April and December, 1960, and depicting transit times on shipments from these origins ranging from 3.81 to 6 days as handled by Ryder, Dixie, Couch, applicant, and Barnes, in various combinations, and by Railway Express, from, *inter alia,* Birmingham, and Bremen. Railway Express has also been used because it affords faster service. Routings are controlled, and carriers are sometimes specified. Time in transit and consistency of service are important in order to keep smaller inventory up on styles, eliminate shortages and delays, and to get shipments quicker. Proposed service by applicant would be a convenience, is desired, and would be used; and service by confection out of South Carolina, at some point on applicant's proposed extension, also would be a convenience, is desired, and would be used. The company is open to receive shipments on Satur-

day. Applicant's service has been satisfactorily used on shipments from other points.

McClure Furniture Company, Abilene, Tex., receives shipments from Dalton and Rome, Ga., Thomasville and Lenoir, N.C., and Martinsville, Va. Witness sponsored exhibit 185 covering 16 representative shipments, mostly special orders, from Dalton and Lenoir, moving between October 1959 and September 1960, and showing transit times on shipments from Dalton ranging from 4 to 9.66 days. Shipments have been routed in an attempt to get desired service. Transcon does not follow routing instructions. Transit time and consistency of service are important in order to maintain smaller inventories and in order to schedule installations. Merchandise has to be purchased out of Dallas market at higher prices because of more reliable transportation service from that point, which is an inconvenience and is undesirable. Applicant's proposed service would be a convenience, is desired, and would be used. With proposed service, better special order service could be provided, inventories reduced, and firm commitments made to customers in regard to delivery, and more merchandise would be bought from mills at lower price with a saving of approximately 13 percent. *Complaints have been made to carriers about service, but has been unable to get improvement.* Service of applicant would be specified on shipments.

Broyles Floor Covering Company, Abilene, Tex., sponsored exhibit 186 covering eight representative shipments from Calhoun and Fort Oglethrope, Ga., and Chattanooga, Tenn. moving between November 1959 and December 1960, showing transit times in excess of 10 days on all shipments listed. Service is not satisfactory because too slow and not consistent. Transit time and consistency are important because

of *loss of sales* and inability to take discounts, and in order to plan sales and inventory. Ryder, Murdock, T.I.M.E. and Merchants have been used of Calhoun and Fort Oglethorpe. Carriers promise 5 or 6 day delivery and do not maintain it. Applicant's proposed service would be a convenience, is desired, and would be specified and used. Company prefers to purchase at mills in California and Fort Oglethorpe, but because of transportation service has to pay a penalty and buy through warehouses at Dallas and Houston, where extra warehousing charge has to be paid. Purchases could be reinstated out of Calhoun if 4 or 5 days service could be obtained, and 75 percent of purchases would come out of the Georgia area, amounting to about $50,000 a year. Tracing service has been poor. Proposed teletype service of applicant would be a convenience.

Pyron Furniture Company, Natchez, Miss., sponsored exhibit 187 covering 14 representative shipments from Birmingham and Scottsboro, Alabama, and points in the Carolinas from January through December 1960. Transit times afforded shipments from Birmingham average 3.72 days, ranging from 1.50 to 5 days. About 20 to 25 shipments are received from Birmingham each month. Time in transit is important and consistent service would be beneficial for maintaining smaller inventories, less purchasing from jobbers at higher price, and to meet competition. Transit time service not satisfactory, especially that provided by Delta, and, further, it is *often necessary to pickup shipments at Delta's dock.* Difficulty has been had with Delta on tracing. *Complaint has been made to Delta about transit time and pickup service and claims.* Proposed service of applicant from Birmingham, and from Atlanta as an interchange point, would be a convenience, is desired, and would be used.

Advantages from proposed service would be quicker delivery to customers, lower inventories, and less buying from jobbers.

C-Clear Glass Company, Natchez, Miss., sponsored exhibit 188 covering 15 representative shipments from Atlanta, Ga., to Natchez moving between April and November, 1960. Exhibit covers all shipments for the period moving from Atlanta and handled by Dixie, Delta, United, Ryder, Transcon, Couch, GFA, and A–NO in various combinations, and reflecting transit times ranging from 5 to 9 days. Large stock is not maintained, and orders are usually for special purpose; therefore, expedited service is necessary. Several combinations of carriers have been tried in an effort to improve service, but it has not improved to satisfaction. Has experienced delays in delivery. *Complaint has been made to delivering carriers.* Applicant's proposed service would be convenient to help meet local competition, and would be used. Purchases at higher cost out of New Orleans market will be shifted to cheaper Atlanta market, and such purchases out of Atlanta will be increased by 10–15 percent if proposed service made available. Consistent service is important because shipments are C.O.D., and company needs to know what time they will arrive so as to be prepared for them.

Beaver Bros. Furniture Company, Jackson, Miss., sponsored exhibit 189 covering 11 representative inbound shipments moving between February and September 1960, from Atlanta and Birmingham, and from Dalton among other points, handled by such carriers as Dixie and Campbell 66, and afforded 2–6 day transit time service. Time in transit and consistency of service are important because if shipments cannot be obtained in 2 or 3 days the sale is lost, and company does not like to maintain large inventory. Dixie has

handled traffic from Atlanta; and service has not been satisfactory, dependable, or reliable by any carriers from any points. Proposed overnight service of applicant from Birmingham and Atlanta would be convenient, is desired, and would be specified and used. Also service by connection at Atlanta on shipments originating at points applicant will not serve. Proposed service would increase sales by approximately 10 percent, especially on special orders. Business is open to receive shipments on Saturdays.

Dixie Furniture Company, Natchez, Miss., sponsored exhibit 190 covering 16 representative inbound shipments moving between September 1959 and December 1960 from Atlanta, Birmingham, Dalton, and points in the Carolinas, handled by such carriers as A-NO, Delta, Campbell 66, and Dixie, and subjected to an average transit time of 5 days in case of shipments from Atlanta and Birmingham. Present service not consistent or satisfactory. Time in transit and consistency of service are important to permit lower inventory and obtaining merchandise on special orders. *Complaint has been made to warehousemen of Delta.* Company open to receive shipments on Saturday. Applicant's proposed service would be a convenience, is desired; and would be used. Has used applicant's service to Texas and Louisiana, and such service was dependable. Purchases not being made in Atlanta at present because merchandise arrives in damaged condition, but desires to order from Atlanta if better service were available, and the same applies to Birmingham. Difficulty has been had with tracing of shipments moving by Couch.

Feldman's Department Store, Newton, Miss., sponsored exhibit 191 covering 44 representative inbound shipments moving between January 1960 and January 1961 from such points as Atlanta, Bremen, Montgom-

ery, Dallas and Shreveport, and from other points beyond the scope of applicant's present and proposed authority. The exhibit shows that shipments from Georgia origins are subjected to transit times ranging from 2 to 16 days, and an average of 6.23 days. Routing is left up to sales representatives. Transit time shown was not satisfactory because of delays. Time in transit and consistency of service are important. The proposed service of applicant, with delivery from a line-haul vehicle in Newton, would be an advantage, and would be used. Company desires to receive shipments on Saturday.

Acme Electric Service Company, West Monroe, La., receives emergency shipments from Atlanta once or twice a month. Shipments move by Dixie and Couch. Time in transit and consistency of service are important because of breakdowns of customers, and because small inventory is carried. Larger shipments move by truck, and smaller ones by parcel post or bus, which is more expensive. Service by Dixie and Couch has not been satisfactory. *Complaint has been made to suppliers' salesmen.* Applicant's proposed service would be a convenience, is desired, and would be used, as more purchases could be made from Brownell Distributing in Atlanta, and proposed service would save money on bus and air freight. Company desires Saturday deliveries. With proposed service, 25 to 50 percent more purchases would be made in Atlanta, or approximately $1,000 a year, and company would also save money.

McAdams Plumbing Company, Montgomery, Ala., sponsored exhibit 193 covering 25 shipments moving from Houston, New Orleans, and Tulsa, between December 1959 and November 1960, and showing transit times ranging from 3.33 to 13 days on shipments from Houston and Tulsa, averaging 6.94 days. Ship-

ments shown on exhibit are approximately 50 percent for the period covered, and represent normal orders as distinguished from special orders. Time in transit is important in order to accommodate customers. Shipments out of Houston are routed, and Strickland, Herrin and A–NO have been used. Out of Tulsa, Transcon, Hall or West Brothers have been used to Birmingham. On 15 of the shipments (60 percent) shown on the exhibit the service was unsatisfactory. Delay on shipments from Tulsa is during the Birmingham-to-Montgomery segment of the move. Applicant's proposed service would be a convenience, is desired, and would be used. Inconsistency has been the greatest problem, and *one customer has been lost because equipment was promised and could not be delivered. Another customer in Montgomery with a government contract was lost because shipment could not be traced, and contract had to be delayed.* A dependable, consistent, and reliable service has not been obtained from Tulsa and New Orelans. *Complaint has been made to Herrin, A–NO and West.* If better service could be obtained out of Tulsa, sales could be increased. Tulsa and Houston shipments are subject to damage by excessive handling, particularly by interchange in New Orleans. Single-line over multiple-line service is preferred. Authorization of proposed service would enable witness to increase purchase made in Houston.

B & H Supply Company, Oklahoma City, Okla., receives freight from LaFayette, Columbus, and Senoia. Witness sponsored exhibit 194 covering 11 representative shipments moving between December 1959 and December 1960. Ten shipments moved in joint-line service by RCA–T.I.M.E. Witness specifies delivering carriers, and manufacturer requested to select best originating carrier known. T.I.M.E.,

Transcon and Jones have been used. Transit time shown, averaging 6.50 days, is representative, and is not satisfactory. Transit time and consistency of service are important, as delays hurt sales. Territory served is two-thirds of Oklahoma, Wichita, Kansas, Panhandle of Texas, and Fort Smith, Ark. Everything is reshipped out of Oklahoma City. No formal compliants have been made to shippers, but consignee has discussed transit time with solicitors. Company prefers to buy in southern markets because of cheaper rates, but has faster and more dependable service out of New York. Proposed service by applicant would be convenient, is desired, and would be specified and used. Present purchasing of $400 to $500 of merchandise per month from New York would be purchased in LaFayette market if adequate and dependable service were available. Dependable and consistent service had not been found on shipments out of LaFayette.

Lincoln Enterprises, Inc., Ruston, La., sponsored exhibit 195 covering 13 representative inbound shipments routed through Montgomery or Meridian, handled by Roadway, Ryder, Dixie, Couch, Cole, and M & D in various combinations. Time in transit is important because of production schedules, and if shipments are not received in time employees have to be laid off. Time-in-transit service given by Dixie, Couch, Ryder, Cole, and Roadway is not considered satisisfactory because too slow, averaging for example, 6.13 days from Montgomery or Meridian to Rutson. Witnesses' business is seasonal and products are needed quickly. *Complaint has been made to these carriers, and specific complaints made to Dixie and Ryder.* Difficulty has been had with Ryder in tracing. Proposed service of applicant would be a convenience, is desired, and would be used. Applicant's service from

other points has been used and is dependable and reliable. Attempt has been made to route shipments by applicant from Salem. A shipment given to Dixie with routing instructions to give to applicant did not come in by applicant. Routing has been changed to Jack Cole and Ryder.

Hanna Steel Corporation, Birmingham, Ala., ships frequently to a large number of points in Louisiana, numerous Georgia points, Texas points, and a large number of points in Mississippi. Carriers used have been West Bros., Mercury, Transcon, Deaton, Ryder, Campbell 66, Ross Neely, Colonial Fast Freight, Eagle, Hoover, and Gordons. Service into Louisiana, Mississippi and Texas has not been safisfactory because of difficulty in getting these carriers to make pickups, and in experiencing slow transit time. *Complaint has been made to Eagle, Hoover and Baggett.* Carriers will not pick up less-than-truckload shipments on Saturday, and Saturday pickups are desired. Time in transit and consistency of service are important to meet competition and to maintain production schedules. *Business has been lost in Mississippi and Louisiana because of poor service.* Fifty percent of business is rush shipments. Experienced poor service from Mercury on truckload shipments to Dallas in November 1960. Proposed service of applicant to Texas, Mississippi, and Louisiana points would be a convenience, is desired, and would be used. Company selects carrier on 85 percent of the shipments. Direct service preferred because of speed in transit and less chance of damage. Has not used Mercury's new closed-door service to Dallas, Tex.

Phifer Wire Company, Tuscaloosa, Ala., makes shipments to New Orleans, Shreveport, Baton Rouge and Monroe, La.; Jackson, Natchez, Vicksburg, and Meridian, Miss., Tulsa, Okla., Atlanta, LaGrange,

Rome, Macon, and Athens, Ga., Phoenix, Tucson and Yuma, Ariz., and Covina, Calif. Shipments to California and Arizona move Campbell 66 to Memphis, then Western Carloading to destination, or by local carrier to Birmingham and then by Transcon. Some shipments move Dixie to New Orleans and then by Herrin. Dixie handles shipments to Meridian, Jackson, and points in Mississippi and Louisiana. Texas shipments are handled by Transcon through Memphis. There is no single-line service out of Tuscaloosa to any point mentioned. Company has 49 active customers in Mississippi, 34 in Louisiana, 174 in Texas, 49 in Oklahoma, 17 in Arizona. Transit time is important, as is consistency of service. *Complaints on transit time have been received from customers in Mississippi, Louisiana, Texas, and Arizona.* Single-line service is preferred because of faster time, less chance of damage, and better claim service. Tracing service has been very unsatisfactory. Dixie's service is considered poorer than any other. About 80 percent of the time, carriers honor routings. *Complaint has been made to Hall, Dixie, and Campbell* 66, *without any improvement.* Applicant's proposed service would be a convenience, is desired, and would be used, and is the kind of service desired. Shipments are subject to damage. Proposed service would enable company to better meet competition. Witness cited specified examples concerning excessive time-in-transit and damage experienced on particular shipments handled by Dixie, Western Carloading, and Campbell.

Sumpter Manufacturing Company, York, Ala., receives shipments from Birmingham and Atlanta once a month, and ships outbound to Farmerville, La., once a month. Dixie picks up outbound freight and routes shipments beyond its lines. Baggett comes through York once or twice but not regularly. *On numerous*

occasions, Dixie has picked up shipments 3 or 4 days after called. Dixie has to be called at Meridian. Truck-lines are not being used at present because of poor pickup service experienced. Shipments of less than 100 pounds are sent by bus or by mail, which is more expensive and inconvenient. With a consistent and dependable pickup service, shipments could be made of more parts, and could be made to other potential market areas in Bastrop and Farmerville, La., Wilmar and El Dorado, Ark., and by interline to points in North and South Carolina. Applicant's proposed service would be convenient and is desired.

Peerless Supply Company, Natchez, Miss., sponsored exhibit 109 covering 14 representative shipments to Natchez from Atlanta and Birmingham moving between November, 1959, and October, 1960, handled by GFA, Couch, Campbell 66, Delta, Dixie, Ryder, and West Bros., in various combinations. The exhibit reflects time in transit ranging from 2 to 6.60 days, and averaging 4.68 days. The exhibit covers approximately 50 percent of the shipments for the period reported from the involved points. *Business has been lost because of delays in transit.* Company reserves right to route shipments. Service has not been satisfactory, and because of excessive delays experienced when shipments are handled by two or more carriers. *Complaint has been made to Couch and Delta about deficiencies in time-in-transit and delivery service provided but without any improvement.* Time in transit and consistency of service are important. Applicant's proposed service would be a convenience, is desired, and would be used in order to maintain and increase business. A consistent service from Atlanta and Birmingham has not been obtained and *has caused the company to lose sales.* Tracing service has not been obtained in time and manner desired. The company

is opened to receive shipments half a day on Saturday, and Saturday deliveries would be a convenience. *Cabin Crafts, Inc.*, Dalton, Ga., ships to points in Texas, Louisiana, and Mississippi, and is particularly interested in service to points east of Dallas, west of Meridian, and points beyond Dallas and Houston, Tex. Shipper routes 60 percent of shipments, and *every carrier that comes into Dalton has been used.* Ryder has not served Dalton in the past 3 years. Texas shipments have been routed Murdock to Atlanta and Ryder beyond, and Louisiana shipments A–NO to New Orleans, also Dixie to Jackson. Transit time is important, because if shipments have to be obtained out of Dallas for faster delivery the cost is more and rates are higher. Experiences trouble in utilizing joint-line services because carriers breach Jackson-gateway routings, and instead utilize the congested New Orleans gateway on many occasions which consumes too much time-in-transit. If this application is granted, applicant will be given freight at Atlanta that is destined to the east Texas area and freight beyond Dallas and Houston. Such service is desired and would be utilized. Such service into Jackson and Louisiana points would be a convenience and is desired. Tracing service has not been satisfactory. Company ships between 23 and 25 million pounds out of Dalton per year to all points. Georgia Highway Express, Johnson and Murdock also can be used as initial carriers from Dalton to Atlanta. Shipments are satisfactorily made via applicant east of Dallas.

Midwest Dairy Products Company, Ruston, La., sponsored exhibit 210 covering 20 representative shipments to Ruston, primarily from Atlanta, moving between February and November 1960, and handled by such carriers as Dixie, Couch, Campbell 66, Ryder, and Hall. Shipments from Atlanta are subjected to

an average transit time of 6 days. Company specifies carriers. Transit time is important. *Many complaints have been made to Ryder and Couch on service and handling of shipments.* Has received shipments by applicant from Jackson, Memphis and Dallas, and its service has been dependable and reliable. Applicant's proposed service would be a convenience, is desired, and would be used, because the company could order in smaller quantities as warehouse space is limited.

American Linen Service Company, Shreveport, La., maintains outlets at Shreveport, Lafayette, and Monroe, La., and receives shipments at each of those points. Witness sponsored exhibit 211 covering 90 representative shipments moving between October 1960 and January 1961. Four or five shipments a month are received from Atlanta, Griffin, and Hawkinsville, Ga., and Opelikar, Ala., and one a month from Belton, S. C., and Kannapolis and Granite Falls, N. C. Transit times on shipments out of Atlanta and Opelika range from 4 to 9 days as handled by rail and by Dixie-Couch. The company reserves the right to route shipments but discontinued routing because service has not improved, and shippers are now advised to make shipments by "best routes possible." Transit time and consistency of service are important to keep down inventory and enable better service on installation of new accounts. Shipments out of Chicago are received faster, but are not desired because of higher cost. Service has not been satisfactory because of time factor. Applicant's proposed service from Atlanta and Opelika would be a convenience, is desired, and would be used; as would its connecting line service at Atlanta or Birmingham for shipments out of South and North Carolina, and points in Georgia. Applicant has been used from other points it serves, and the service is dependable and reliable.

Applicant's service would allow smaller inventories and would aid competition. Tracing service with Couch has been unsatisfactory. Company is open to receive shipments on Saturday, and Saturday deliveries would be a convenience.

American Rag Stock Company, Birmingham, Ala., ships all over the U.S.A. and into Canada. The company routes the shipments, and stopped using Dixie because of excessive interchange delays experienced. Presently, utilizes Ryder into Texas and other western points. West Bros. handles shipments to Mississippi, and Ryder transported Louisiana-destined shipments. Uses Transcon into California, and Transcon and Hoover into Arizona. Transit time is important, and service on shipments to California is not satisfactory because of slow time-in-transit. The same is true on shipments into Utah and Nevada. The most direct carriers are used. Applicant has been used satisfactorily on shipments to West Coast originated at Birmingham by West Brothers. Applicant's proposed service to Los Angeles and points beyond would be a convenience, is desired, and would be used.

Wagnon Auto Parts, Montgomery, Ala., receives shipments from Los Angeles and Paramount, Calif., once a month; from Jackson, Miss., daily to three times a week; from Booneville and Ellisville, Miss., once a week; and from Meridian, Miss., once or twice a week. Shipments are also made outbound to points from which shipments are received, except Los Angeles. Outbound shipments are made also to Columbus and Atlanta, Ga., Memphis, Tenn., and New Orleans, La. Witness sponsored exhibit 212 covering 15 representatives inbound shipments moving between February and November 1960, and showing transit times ranging from 2–2.33 days on shipments from Jackson and Meridian, to 9 days on shipments from Los An-

geles. Time in transit on inbound and outbound shipments is important to maintain smaller inventory, better delivery service, and to meet competition. Most shipments are rush because of breakdowns. Company controls routing most of the time. Carriers used on inbound shipments have been Hall Motor, Dixie, Viking, West Bros., Universal Carloading, Braswell, Transcon and AAA. Service has not been satisfactory. Service from Jackson, Miss., a distance of 225 miles, should be overnight but takes 2 days or more; service from Meridian, Miss., 150 miles, also takes 2 or more days, and Dixie provides needed overnight service less than half the time; Ellisville shipments take 2 days and should be 1, because shipper takes shipment to carrier at Jackson; from Booneville, Miss., shipments require 2 to 5 days. Braswell's proposed service would be a convenience, is desired, and would be utilized. Presently uses Dixie, and Dixie takes shipments from Montgomery to Jackson through Birmingham generally. *Complaint has been made to Dixie.* Time in transit is important on both inbound and outbound traffic. Type and kind of service needed has not been obtained. A consistent, dependable and reliable service is desired. If application is granted, shipments from Booneville, Ellisville, Crystal Springs and Meadville will be routed through Jackson.

D. H. Holmes Company, New Oleans and Baton Rouge, La., operates two department stores. Witness sponsored exhibit 213 covering 79 representative shipments to New Orleans and Baton Rouge moving between June and December 1960, primarily from various relevent points in Georgia, Alabama and Mississippi on applicant's proposed routes. The exhibit depicts transit times ranging from 4 to 11 days, and averaging 6.72 days. Carriers used have been Dixie Ryder, Barnes, A–NO, Georgia Highway Express,

Dixie Ohio Express, Couch, Herrin, Hoover, Northern, Mercury, Transcon, Campbell 66, Viking, and others. *Transit time has been too long, and complaint has been made about the transit time generally to all carriers named above, specifically to Dixie, A–NO, West, and Viking, with no improvement in service.* Consistency of service is important because of customer orders. A single-line service is preferred because it eliminates claims and tracing difficulties. Ryder is not being used because Ryder's service considered generally poor. Difficulty has been had in getting tracing information, and shipments have been traced with Dixie, West Bros., Ryder, A–NO and Couch. Braswell's service has been used on West Coast traffic and the service has been dependable and reliable. Applicant's proposed service would be a convenience, is desired, and would be used.

Grimes Company, Inc., Dallas, Tex., makes shipments to Birmingham, Ala., Atlanta, Ga., and Burlington, and Salisbury, N.C., once a month to the various points. Carriers used are Roadway, Transcon, East Texas and Strickland. Shipments are routed, and time in transit is important because the customer needs a shipment when it is ordered as there is a time limit involved. *Complaints have been received from named customers on time-in-transit service, and complaint in turn has been made to the named carriers, with no improvement in service.* One customer at Salisbury, N.C., complains on every shipment received once or twice a month.

Adamo, Inc., Los Angeles, Calif., receives shipments weekly from points in Georgia, Alabama, and North Carolina. Carriers used mainly are Western Carloading and Shippers' CO-OP out of Dalton. Witness sponsored exhibit 215 covering 5 representative shipments handled by Western Carloading alone or in

conjunction with Baggett or Bee Line in August 1959 and March-July 1960. This exhibit reflects transit times ranging from 8 to 14 days. Time in transit is important because business of company depends on how fast raw materials are obtained, and the company cannot afford to carry large inventory. When shipments move in multiple-line service, problems are encountered. Very few shipments have been made out of area by carriers, but rather are handled under a Shippers' CO-OP arrangement which was formed because shippers could not get satisfactory service to the West Coast. Proposed fourth morning service by applicant from Atlanta, Columbus, and Birmingham would be convenient and is desired.

Melvin's Clothiers, Odessa, Tex., operates two stores in Odessa. Witness sponsored exhibit 217 covering 25 representative shipments, primarily from Bremen and Cedartown, Ga., between January 1960 and January 1961, reflecting an average transit time of 6.73 days afforded by combinations of such carriers as T.I.M.E., Transcon, Merchants, and Barrier. Time in transit and consistency of service are important because of sales promotions and newspaper ads, and it is necessary to have fast service on re-orders. Braswell's service has been used from other points and it has been found to be reliable and dependable. The proposed service of applicant would be convenient, is desired, and would be used.

Hi-Ten Metal Products Company, and Southeast Awning Company, Atlanta, Ga., sells basically to small retail manufacturers. Shipments are made to Shreveport, New Orleans and Baton Rouge, La., and Jackson, Miss. *A customer was lost in Monroe, La., because he could not get shipments in time.* Carriers utilized to Louisiana destinations have been United to Birmingham and Ryder to Baton Rouge and Shreve-

port, and Campbell 66 to New Orleans. Shipments to the area between Atlanta and Shreveport, and south, are made on average of once a day in summer and twice a week in winter. *Complaints have been received from named customers, particularly against Ryder's service.* Proposed service of applicant would be a convenience, is desired, and would be used. Such service is needed because of competition. Service presently available does not afford sufficiently prompt time in transit service to move shipments to points between Jackson and Shreveport, and New Orleans, in time to compete with service out of Dallas, Houston, and Chicago markets. If the proposed service was available, these businesses consider that business could be increased by three times the dollar volume of 1960, specifically from some $60,000 to at least $180,000. *Difficulty has been had with pickup service in Atlanta.* Ryder may wait 2 days before picking up freight, and the company has had trouble with Ryder on damage to freight.

Louisiana Machinery Company, Monroe, La., sponsored exhibit 218, covering 35 representative shipments from Georgia origins moving between September 1959 and November 1960, handled in combination by such carriers as Dixie, Couch, Ryder, A-NO and Herrin. Times in transit of these shipments ranged from 3 to 25 days. *Such transit times are not satisfactory to witness, and complaint has been made to the carriers, also about delivery service, but no improvement has occurred in service.* Difficulties in tracing shipments have been experienced, particularly in using the services of Couch and Ryder, and information cannot be obtained. A consistent and dependable service has not *been obtained, and customers have been lost for that reason, as well as because of poor transit time.* Most shipments are emergency or rush orders,

and a faster transportation service is desired. Air freight has been used but is too expensive. Applicant's proposed service would be a tremendous help, is desired, and would be used. Applicant's service has been used from other points, and it has been found to be dependable and reliable. Couch and Ryder have represented that shipments would be delivered in mornings, but have not provided such service on most occasions.

Lewis & Company, Ruston, La., sponsored exhibit 219 covering 66 representative shipments from various Georgia, Alabama, North and South Carolina, and Virginia points moving between January and November 1960. The company routes shipments when it feels that it will do any good. Transit time and consistency of service are important because of re-orders and special orders, and because the merchandise is style or seasonal merchandise. The company uses such carriers as Couch, Ryder, Braswell, Dixie, Wilson, Over-nite, A-NO, Thurston, Illinois Central, and Rock Island Railroads. If the instant application is granted, applicant's proposed overnight or first day delivery service would be used to handle shipments out of Birmingham, Fairfax, and Heflin, Ala., and Columbus, Marietta, and Bremen, Ga. Such service would be a convenience, is desired, and would be used. Present service, as reflected in exhibit 219, affords times-in-transit ranging from 3 to 12 days, and averaging 6.80 days, on shipments from Bremen, Marietta, and Columbus, Ga., and Fairfax, and Heflin, Ala., which service is too consistently slow to accomodate promotional sales of company. Difficulty has been had in tracing with both Couch and Illinois Central because of number of carriers involved. Difficulty has also been had in getting claims paid. Saturday deliveries are desired.

McGhee Brothers Furniture Company, Baton Rouge, La., sponsored exhibit 220 covering 23 representative shipments from various Georgia and Alabama origins and points in the Carolinas moving between March and December 1960 via various combinations of carriers, such as Ryder and Couch, Dixie and Couch, Transcon and Couch, AAA and Ryder, P. C. White and Ryder, Hiller and Ryder, and also via rail services. Transit times afforded shipments from Georgia and Alabama points have ranged from 6 to 13.50 days. Exhibit represents 50 percent of company's shipments during this period. Merchandise is seasonal, and transit time and consistency of service are very important. *Transit time service has been unsatisfactory, and complaints have been made to Couch and Ryder, but consistent and dependable motor service has not been obtained.* Applicant's proposed service would be convenient, is desired, and would be used. Slow transit time causes inability to take advantage of short-term discounts, resulting in considerable loss of money. Tracing difficulties have been experienced with Ryder, AAA and the railroads. Applicant's teletype system would be beneficial, and the proposed single-line service would be faster and result in better claim service. Claim difficulties have been had with Couch, AAA and Ryder. Braswell has been used on shipments from the west, and it has been found to be dependable and reliable. If proposed service available, the company will increase purchases from area shown on exhibit by approximately 50 percent, or $90,000 a year. The company is open to receive shipments on Saturdays.

Orr Industries Company, Opelika, Ala., sponsored exhibit 221 covering 24 representative inbound shipments to Opelika moving between June and December 1960, from Atlanta, and Chamblee, Ga., Fort

Worth and Houston, Tex., New Orleans, and Oklahoma City, among other points. These shipments were subjected to transit times ranging from 2.83–6 days, and averaging 3.75 days, in the case of shipments from Georgia origins, to 12 days on shipments from Oklahoma City. Transit time and consistency of service are important for receipt of raw materials and repair parts because of the nature of consignee's business involving government contracts, and to prevent shutdowns of the plant. *Complaints have been made to carriers, particularly to Dixie, Ryder and Jack Cole,* and difficulties in receiving service on shipments out of Atlanta were cited as an example. Tracing information cannot be secured in time and manner desired. Applicant's teletype service for tracing would be a big convenience. Applicant's service would be convenient, is desired, and the company will route its shipments by applicant if this application is granted. The company has a substantial number of outbound shipments to Memphis, New Orleans, Baton Rouge, Alexandria, Monroe, Shreveport, Tulsa, Oklahoma City, Fort Worth, Dallas, Houston, San Antonio, Waco, El Paso, Tucson, Phoenix, Los Angeles, and Air Force bases around San Antonio. Carloading service is used to California, and is considered too slow but has been faster than trucklines. Transit time on outbound shipments is important because of competition, and such shipments are made daily all over the United States. On shipments to New Mexico witness uses BC, T.I.M.E. and Navajo; to Louisiana points, witness uses Dixie to New Orleans and Herrin beyond, or Ryder to Shreveport; to Dallas and Fort Worth, Roadway is utilized to Houston and to south Texas points, uses Ryder; El Paso-gateway shipments are routed by BC to Atlanta and T.I.M.E. to El Paso; to Phoenix and Tucson, witness uses either Transcom or T.I.M.E. Com-

pany prefers to use single-line service to remain in effective competitive position, and would use applicant's service to Louisiana points, El Paso, Tulsa, Phoenix and Tucson. Company desires better service in order to increase business.

W. L. Sommer Company, Shreveport, La., sponsored exhibit 222 covering 35 representative shipments to Shreveport, La., and Brookhaven and Tinsley, Miss., moving between April 1960 and January 1961, primarily from Commerce, Ga., and subjected to transit times ranging from 5 to 11 days. Carriers used include Dixie, Couch, Dance, Ryder, Benton, Roadway, Campbell 66, Ryder, Delta, and GFA. Difficulty has been experienced in tracing, and *complaints have been made to Ryder, Delta and Couch, but have not resulted in service being improved.* Applicant's proposed second morning delivery service out of Atlanta and shipments originating at Commerce, Ga., would be convenient, is desired, and would be used.

James S. Williams, manager of the Monroe, La., Chamber of Commerce, brought exhibits pertaining to growth, population, industry, and economics of Monroe, and to manufacturers in the area, commodities manufactured, personnel and number of employees of each manufacturer, and business trends and growth indicators for the area.

H. Mickel Dry Goods Company, Inc., Monroe, La., receives shipments at Monroe and reships to points within a radius of 150 miles. Witness sponsored exhibit 230 covering all (48) inbound shipments from pertinent Georgia origins and points in Alabama and the Carolinas, moving between July and October 1960. Times in transit on shipments from Atlanta and Villa Rica, Ga., range from 6–7 days. Shipments are routed when company knows best routing. Transit time is important because of company's limited inventory. A

dependable, consistent, and reliable service has not been available from existing carriers, such as GFA, Couch, Ryder, Dixie, and Bassett, and by rail, which has been detrimental to business of company. Business is small and does not make large orders, depending on frequent orders. Prefers one carrier in order to trace shipments. Applicant's proposed overnight service would be convenient, is desired, and would be used. Applicant has been used in the past and has been found to be dependable and reliable. If proposed service was available, company would purchase more from origin points shown on exhibit.

Southern Camera Service, Baton Rouge, La., sponsored exhibit 234 covering 11 shipments of perishable goods, susceptible to damage by excess handling in transit, from Atlanta, Ga., to Baton Rouge moving between January and October 1960, and depicting an average transit time of 6.44 days. Transit time and consistency of service are important to maintain proper inventory and stock control, and has not been satisfactory on the whole, as experienced from the services of A–NO, England, Garig, and Huff because of delays and shortages experienced. Atlanta is the principal supply point. The company has a right to route its traffic. Applicant's direct single-line proposed service is desired, and if available applicant would be specified on Atlanta-origin shipments.

Capitol Roofing & Sheet Metal Works, Jackson, Miss., sponsored exhibit 235 covering 17 representative shipments from Birmingham and Atlanta moving between April 1960 and January 1961, and subjected to an average transit time of 2.84 days. Inconvenience was experienced on several jobs because they were contract jobs and several telephone calls had to be made to carriers for service, and crews or workmen moved to other jobs while waiting on material. Has

experienced documented damage and delays in connection with present service utilized. *Complaints have been made to Dixie and Delta, and those carriers are no longer being used. Complaints also made to Campbell 66.* Proposed service of applicant would be a convenience, is desired, and applicant would be specified on shipments from Birmingham and Atlanta.

Brownfield's Repair Ship, Baton Rouge, La., sponsored exhibit 236 covering 19 representative shipments moving from Atlanta between June and December 1960. On five shipments, moving via Railway Express, the average transit time was 5.20 days; on thirteen shipments moving via Ryder, the average transit time was 7.00 days; and on one shipment moving via A–No. and England Transportation, the transit time was 7.00 days. Rush shipments are obtained out of New Orleans by bus, because service cannot be secured out of Atlanta within 24 or 48 hours, but company prefers to order from Atlanta on account of 40 percent discount as opposed to the 25 percent out of New Orleans. Transit time shown on exhibit is not considered satisfactory *and sales have been lost because of slow time in transit.* Company reserves right to route shipments. Stopped using Ryder because of poor service, and has had two claims pending with Ryder for over a year. Now uses A–NO and England. On February 21, 1960 England was asked about shipment and advised shipment had been in Baton Rouge two days but was not unloaded. *Such delivery service is inconvenient and unsatisfactory.* Applicant's proposed service would be a convenience, is desired, and would be used, as approximately 90 percent of traffic now ordered from New Orleans would be ordered from Atlanta. Company has been unable to obtain dependable service out of Atlanta, and *complaints have*

been made to Ryder with no improvement, and to England Transportation, also with no results.

Coronet Carpet Mills, Inc., Dalton, Ga., makes shipments to Shreveport, Oklahoma City, Tulsa, Dallas, Houston, San Antonio, Abilene, Midland, Odessa, El Paso, Phoenix, Fort Worth and Sweetwater. Consignees do most of routings, and connecting routings with Red Ball, T.I.M.E., Transcom and Ryder have been tried. Shipments range from 60,000 to 100,000 pounds per month, and as many as 20 shipments made per month to points such as Dallas, Fort Worth, Oklahoma City and Tulsa. *Company has received complaints from eight named customers that movement of traffic is too slow to points named.* Customers have asked company to support this application. Difficulty has been had in tracing a tremendous number of shipments. Primary trouble has been that the terminating carrier specified on the bill of lading has not been delivering carrier, and when this occurs, tracing has to start at origin. *Complaint has been made to carriers, primarily to western carriers, such as T.I.M.E., and no improvements have been made.* A warehouse is maintained in Dallas. Applicant's proposed service would be a convenience and is desired. On account of limited warehousing space and transportation costs at Dallas, the company prefers to buy from mill at Dalton, and customers complain because of price differential.

Brown Hosiery Mills, Villa Rica, Ga., makes shipments to jobbers and chain stores at New Orleans, Dallas, El Paso, and Los Angeles. Company routes outbound traffic part of time, and usually utilizes Barnes as the originating carrier. Routing beyond is done by Barnes. *Complaints have been received from customers on some shipments moving into Texas,*

Louisiana and California territory. Customers want 30-day discount period instead of 10 days because of time taken to get shipments. Barnes is only carrier serving Villa Rica, which is 40 miles from Atlanta. Faster service should improve sales. About 90 percent of orders are rush orders. Applicant's proposed service would be a convenience, is desired, and would be used.

Weiss & Goldring, Alexandria, La., sponsored exhibit 237 covering 20 representative inbound shipments from Atlanta, Marietta, and Dalton, Ga., and points in North Carolina, moving between September and December, 1960. Carriers utilized include Ryder, GHE, Dixie, Couch, Herrin, and rail. Transit times on shipments from Atlanta and Marietta have ranged from 3 to 8.50 days, and average 5.92 days. Company specifies routings and has specified Ryder mostly because mills recommended Ryder as being most direct and quickest route. Transit time and consistency of service are important. Service has not been satisfactory because the company has been inconvenienced by length of transit time. Desires consistency in order to schedule orders. *Complaints have been made to Ryder.* Applicant has been used on shipments from Dallas and has been dependable and reliable. Applicant's proposed service would be a convenience, is desired, and would be utilized. If such service was available, purchases from territory shown on exhibit could be increased about 10 percent, better control on inventory could be kept, and discounts could be taken.

Southern Household Products Company, Inc., Birmingham, Ala., makes shipments to Jackson, Meridian, Columbus, Vicksburg, Natchez and Winona, Miss., Baton Rouge, New Orleans, Lake Charles, Shreveport and Monroe, La., San Antonio, Galveston, Dallas, Bryan, Houston, Jasper, Texarkana, Fort

Worth, Rosenberg, Center and Sweetwater, Tex., and some points in Arizona. Customers are furniture and wholesale plumbing accounts, and some hardware stores. Shipper routes its traffic, and has utilized services of Dixie, Transcon, Campbell 66, Ryder, Hoover and Baggett. Transit time and consistency of service are important because of competition. *Compliants have been received from customers, particularly from Texas points, about Ryder's service, and this carrier no longer is used. Complaints also have been received concerning processing of claims.* Connecting-line service undesirable because of damages to lading from excessive handling. Applicant's proposed service to points west would be convenient, is desired, and would be used, and company could thereby increase business into Texas area 25 to 35 percent, or about $20,000, per month.

Rosenfield's House of Fashion, Baton Rouge, La., has three stores in Baton Rouge. Witness sponsored exhibit 238 covering 59 representative shipments from various Georgia and Alabama points (Atlanta, Birmingham, La Grange, Rome, and Tuscaloosa, for example) as well as from points in the Carolinas, handled by various carriers and combinations of carriers moving between December 1959 and November 1960. Shipments from the named Georgia and Alabama origins have been subjected to transit times ranging from 2 to 12 days, and average 6.23 days in transit. Time in transit is important because of inventory and sales promotions, and because a lot of goods received are pre-sold goods with promised dates of delivery to customer. Consistency of service is important because of scheduling installations, in connection with sale of rugs, an important segment of company's business. Transit-time service experienced is not satisfactory because too long and not consistent. Discounts have

been lost because of time taken in movement of traffic. Applicant's proposed service is desired and would be specified. Braswell has served company from west and has been dependable and reliable. *Complaints about existing services have been made to A–NO and Ryder, but has not been improved.* Tracing service has been consistently poor, which is an inconvenience. *Company has changed routings consistently trying to obtain better service without success.* Applicant's teletype service for tracing also would be convenient and would fill a need. Saturday deliveries also are desired. Applicant's service would increase sales because of better service.

Croft Carpet Mill, Dallas, Tex., sponsored exhibit 239 covering 29 shipments from Fort Oglethorpe, Ga., to Dallas, moving between September 1959 and August 1960. These shipments represent about 50 percent of the less-than-truckload traffic for the period covered, but are small percentage of all shipments received, because most are trailerloads. Problem is with the less-than-truckload traffic, which is all rush. Such shipments are made nearly every day direct to customers because all of various types and styles of the merchandise (carpets) cannot be kept in Dallas warehouse. Time-in-transit service important on this traffic. Dallas warehouse serves Oklahoma, Arkansas, New Mexico, Texas, and Louisiana areas to certain degree. Company-specified routines have been attempted without success to try to improve service. Carriers used include Hoover, Strickland, Ryder, Red Ball, Transcon, Bowman, and East Texas, in various combinations. *Slow transit time experienced from these carriers, which generally averages 6.76 days, has resulted in cancellations of orders,* inconveniences, and loss of profit. Company desires applicant's proposed service and would use it into Dallas and Fort

Worth and to points on U.S. Highway 80 beyond Fort Worth. Would improve company's sales.

Jacobs Carpet Company, Odessa, Tex., sponsored exhibit 240 covering 11 representative shipments moving from Calhoun and Dalton, Ga., to Odessa, between November, 1959 and November, 1960. These shipments have been subjected to transit times ranging from 4 to 13 days, and an average of 8.10 days. Carriers used include Ryder, Merchants, Huber and Huber, GHE, T.I.M.E., and Western-Gillette. Time in transit is important to accommodate customer requirements, and because merchandise can be bought at less cost from southeastern mills, than from wholesale distributors in Dallas. Company pays freight on shipments. Would prefer to buy from mill because cost is about 25 percent cheaper, and would make substantially greater purchases per month from the mill, if proposed service was available. Time in transit shown on exhibit is not considered satisfactory and is inconvenient. Has lost time and had trouble in tracing shipments with carriers shown on exhibit. Applicant's proposed service would be convenient, is desired, and would be specified, and would enable company to make sales and result in lower prices for company and customer.

Daigle & Hinson, Baton Rouge, La., sponsored exhibit 242 covering 8 representative inbound shipments moving from Chamblee, Ga., between November, 1959 and May, 1960, handled in various combinations by Hoover, applicant, Dixie, Couch, and Garig, and afforded an average transit time of 4.92 days. Shipments shown on exhibit are special order shipments. Special orders average about two a week from Chamblee. Service has not been satisfactory as performed by Dixie, Hoover, Couch and Couch because of excessive time in transit afforded on this traffic.

Complaints have been made to Couch and Garig. Applicant has handled shipments over Memphis gateway and service has been dependable and reliable. Consistency of service is very important, and applicant's proposed service would be convenient, is desired, and would be specified. Applicant's tracing service would also be convenient, as company has not been able to obtain satisfactory tracing information. Company prefers to purchase parts out of Atlanta and Chamblee because far less expensive, and purchases would be increased as much as 25 percent, amounting to about $1,000 a month.

Brown Company, Birmingham, Ala., is concerned with shipments to points in such States as Oklahoma, Texas, New Mexico, Arkansas and Louisiana. Plant in Birmingham is new, and investigation has been made of available transportation services to see if they have suitable equipment and authority to destinations. Approximately 80 percent of tonnage moves in full truck loads because commodity is light, and smaller volumes would require less-than-truckload rates which are too expensive. Has had difficulty in obtaining carrier service at Birmingham to move westbound traffic, and often has to combine two orders to get a full truckload, and has had trouble finding carrier that can drop off one load at intermediate points, which is an inconvenience. Applicant's proposed service would be used to points in Texas, Oklahoma, Louisiana, and Mississippi, and the service will meet a need of the company. It is important to know definite transit time so that customer can be ready to receive goods and unload trucks. Company would be better able to develop territory from Birmingham origin if applicant's proposed service was available. Does not operate any private equipment. Prior ship-

ments have moved to Dallas, Houston, Jackson, Phoenix, Abilene, Fort Worth and El Paso.

Selig Manufacturing Co., Monroe, La., sponsored exhibit 245 covering all (347) shipments from such points as Columbus and Atlanta, as well as from points in the Carolinas received during 1960, of which 63 were admitted in evidence. Company often has emergency shipments, and transit time is important on movement of traffic in order to meet production schedules. Transit time on these shipments shown on the exhibit and received into evidence has not been satisfactory because too long, which is an inconvenience. For example, shipments from Columbus and Atlanta handled by Dixie, Couch, A–NO, Herrin, and Ryder, singly and in various combinations, have been subjected to transit times ranging from 5.56 to 7 days. *Complaints have been made, mostly to Ryder.* Consistency of service is important, and company has not been able to get reliable and consistent service. Applicant's proposed service would be a convenience, is desired, and would be specified, as the company could provide quicker service, keep less inventory, make better shipping dates, and would be an improvement over existing services.

Merle Norman Cosmetics, Columbus, Ga., sponsored exhibit 243 covering 19 shipments moving between February 1960 and January 1961, handled by T.I.M.E., Ryder, Dixie, Benton, and Texas-Arizona, in various combinations, and afforded transit times ranging from 7 to 11 days. Witness has shipment from Los Angeles every 10 or 15 days. Time in transit is important. If faster service was available business would be better. Transit time has not been satisfactory because too long. Applicant's proposed service would be a convenience, is desired, and would enable lower inventories to be kept.

James W. Clary Company, Birmingham, Ala., sponsored exhibit 246 covering 23 representative inbound shipments moving from such diverse points as Atlanta and Los Angeles, handled by such carriers as Baggett, United, Ryder, and Campbell 66, between February and October, 1960. Time in transit and consistency of service are important, because company does not carry heavy inventory. Time in transit service out of California has not been at all satisfactory, averaging 7 days, and neither has service out of Atlanta, averaging 2.66 days. Applicant's proposed service would be convenient, is desired, and would be specified.

Mid-South Supply Corp., Monroe, La., sponsored exhibit 247 covering 12 representative shipments from Anniston, Ala., to Monroe between May, 1959 and October, 1960, and depicting transit times ranging from 4 to 9 days, and averaging 6.33 days. Company averages approximately three shipments a month from Anniston, or about 700 or 800 pounds. Time in transit is important because of emergencies and deadlines. *Company has not found consistent and dependable service, though various combinations of carriers have been tried. Numerous complaints have been made to Ryder with no improvement in service thereafter.* Tracing service has been difficult, and trouble has been had with Ryder and Couch on tracing and claim service. Company receives 6 to 10 shipments a month from Louisville, Ky., some through Birmingham, and applicant's proposed service would be convenient and is desired from that point as well as from Anniston. Applicant's proposed overnight or second morning service would enable company to reduce inventory and increase sales by 8 to 10 percent amounting to about $15,000 a year.

Appendix C

REPRESENTATIVE LIST, ALPHABETICALLY BY STATE AND TOWN, OF 76 WITNESSES MAKING COMPLAINTS TO CARRIERS BUT EXPERIENCING NO APPRECIABLE IMPROVEMENT IN SERVICE THEREAFTER

Name	Location	Tr. page	Carrier(s) to which complaints directed
Reeder & McGaughey, Inc.	Auburn, Ala.	4851-4854	Dixie, Baggett, B.C.
Elmco Corporation	Birmingham, Ala.	565	Not specified
Hanna Steel Corporation	do.	6189-6191	Hoover, Baggett, and Eagle.
Miller Wire Works	do.	379-385	Ryder and Campbell 66
Simon & Mogilner	do.	736, 743-744	Transcon and Ryder
Southern Precision Pattern Works.	do.	5593-5600	Ryder, Transcon, and East Texas
Southern Household Products Co., Inc.	do.	7164-7165	Ryder
Bee-Pak Company	Montgomery, Ala.	980-983	Dixie
McAdams Plumbing Co.	do.	6075-6077	West Bros., A-NO, Herrin
Nelson Company	do.	594-599	Dixie
Southeastern Sanitary Supply Co.	do.	5634-5636	Dixie, A-NO, B.C.
Wagnon Auto Parts	do.	643	Dixie
Orr Industries Company	Opelika, Ala.	6029	Ryder, Cole, and Dixie
Independent Lock Co.	Selma, Ala.	5421	Mercury
Phifer Wire Works	Tuscaloosa, Ala.	6249	Dixie, Campbell 66
York Manufacturing Company	York, Ala.	4983	Baggett, Dixie
Parise Department Store	Tucson, Ariz.	3721	Not specified
Royal Rubber Company	Los Angeles, Calif. (Southgate).	2237-2242	Transcon
American Handicraft Company	Atlanta, Ga.	1451-1455	Transcon
Justrite Envelope Mfg. Co.	do.	1189	A-NO
Murray Company of Texas, Inc.	do.	2785-2798, 2800	Transcon
Swim-Quip Corporation	do.	1572-1577	T.I.M.E. and Transcon
Cen-Tennial Gin Supply Co.	Dallas, Tex.	4730	Not specified
J. A. Kirven Company	Columbus, Ga.	4136	Dixie and Benton
Thornton Motor Co.	do.	4346	Dixie
Taylor & Brewer Foundry Co.	Rome, Ga.	2765-2767	Baggett, Dixie
Weiss & Goldring	Alexandria City, La.	7141-7143	Ryder
Brownfield's Repair Shop	Baton Rouge, La.	7085-7086	Ryder, England Transportation
D. H. Holmes Company	do.	6462	Dixie, A-NO, West Bros., and Viking
Daigle & Hinson	do.	7252-7253	Couch, Garig
Fact O'Bake Paint Shop	do.	869-870	Ryder
Gamma Industries	do.	5706	Ryder
McGhee Bros. Furniture Co.	do.	6897-6899	Ryder, Couch
Rosenfield House of Fashion	do.	7182-7183	A-NO, Ryder
Swenson-Clyburn Contract Supply, Inc.	do.	914-915	Dixie, Ryder, A-NO, Garif, and Huff
Tucker's Carpet & Rugs	do.	5452-5455	Ryder

REPRESENTATIVE LIST, ALPHABETICALLY BY STATE AND TOWN, OF 76 WITNESSES MAKING COMPLAINTS TO CARRIERS BUT EXPERIENCING NO APPRECIABLE IMPROVEMENT IN SERVICE THEREAFTER—CONTINUED

Name	Location	Tr. page	Carrier(s) to which complaints directed
Gold Bond Stamp Co.	Monroe, La.	773–776	Bowman, Burks
Louisiana Machine Co.	do.	6823–6827	Ryder, Couch
Mid-South Supply Corporation	do.	7145	Ryder
Selig Manufacturing Company	do.	7571	Ryder
Stag Men's Shop	do.	5045–5048	Ryder, Couch
Lincoln Enterprises, Inc.	Ruston, La.	6135–6144	Dixie, Ryder
Midwest Dairy Products Co.	do.	6859–6860	Ryder, Couch
Ardis Ritchie Grocery Co.	Shreveport, La.	4783–4785	Couch
Caddo Coffee & Cafe Supply Co.	do.	2731–2732	Couch
Liddell Co.	do.	3154	Ryder
W. L. Somner Company	do.	6958–6959	Ryder, Delta, and Couch
Madison Furniture Industries	Canton, Miss.	4030–4032, 4038–4039.	Campbell 66, Delta, Dixie, Ryder, and Gordons
Capital Roofing & Sheet Metal Works.	Jackson, Miss.	7057–7063	Dixie, Campbell 66, and Delta
Kennington Co.	do.	5676–5678	Dixie, West Bros., and Campbell 66
Smith Textile Company	do.	622–623, 625–626.	Dixie
Royter, Inc.	Meridian, Miss.	2289	Dixie
C-Clear Glass Co.	Natchez, Miss.	5967–5969	Couch, Delta
Natchez Photo Co.	do.	5350–5351	Delta, Couch
Peerless Supply Co.	do.	6299	Delta, Couch
J. J. Hanley Plumbing & Heating Co.	Vicksburg, Miss.	5565–5567	Delta
Akin Distributors, Inc.	Tulsa, Okla.	1471	Transcon, Campbell 66
Clark Weddell Supply Co.	do.	3933	Not specified
Frong Company, Inc.	do.	5654–5655	T.I.M.E., Transcon
McLure Furniture Company	Abilene, Tex.	5805–5806	Not specified
Astro Machine Products Company.	Dallas (Grand Prairie), Tex.	2220–2221	Not specified
The Grimes Co.	Dallas, Tex.	6695–6702	Roadway, Transcon, and Strickland
Len-For Products Co.	do.	5239–5240	Transcon
Parkomat Manufacturing Co.	do.	1553–1557	Roadway, Transcon, Red Ball, and East Texas
H. W. Baker Linen Co.	do.	3223–3225	Mercury
House of Carpets	El Paso, Tex.	3092	T.I.M.E.
Triangle Electric Supply Co.	do.	3753–3755	Transcon
Cooke Supply Company	Fort Worth, Tex.	4002–4022	Strickland, Central
Leonard's Department Store	do.	1993–1996	Not specified
Southwestern Petroleum Co.	do.	3370–3371	Roadway, Transcon, and T.I.M.E.
Texas Refinery Company	do.	3023–3025	Transcon
Trice Floor Coverings, Inc.	do.	4663	East Texas, Red Ball
W. B. Jones Carpet Company	do.	1521	Transcon, Strickland, and England Bros.
House of Carpets	Midland, Tex.	814–815	T.I.M.E., Transcon, and Ryder
Sanitary Linen Service	Odessa, Tex.	5433–5434	Merchants
Oriental Rug Co.	Waco, Tex.	4327	Central, Southern Plaza, and Southwestern

Appendix H

ALPHABETICAL LIST BY STATE AND TOWN OF THOSE SUPPORTING WITNESSES WHO TESTIFIED CONCERNING A NEED FOR THAT PART OF THE PROPOSED SERVICE INVOLVING "LOCAL OPERATIONS" (I.E., SERVICE SOLELY BETWEEN POINTS ON THE PROPOSED ROUTES IN GEORGIA, ALABAMA, AND MISSISSIPPPI)

Alabama

Auburn—

- Reder & McGaughey, Inc.—needs service from Atlanta
- Shannon Construction Company—needs service from Atlanta and Decatur

Birmingham—

- Allegheny Ludlum Steel Company—needs service to Jackson
- Brown Company—needs service to Mississippi points
- Fuller Mill Supply Company—needs service from Columbus and Rome
- Hanna Steel Corporation—needs service to Mississippi points
- James W. Clary Company—needs service from Atlanta
- Mill & Textile Supply Company—needs service from Atlanta
- Parker Supply Company—needs service from Jackson
- Robert P. Stapp, Inc.—needs service from Jackson
- Southern Household Products Company—needs service to Jackson and Columbus

Birmingham—Continued
Southern Precision Pattern Works—needs service from Atlanta
Thompson Fabricating Company—needs service to Atlanta
Demopolis—
Business Equipment Company—needs service from Atlanta and Meridian
Montgomery—
Amber Seed Company—needs service from Atlanta
Automotive Paint & Supply Company—needs service from Atlanta
Ben Ellis Supply Company—needs service from Atlanta and Jackson
Crawler Parts Co.—needs service to Mississippi points
McAdams Carpet Company—needs service from Atlanta
Montgomery Fair Company—needs service from Rome, Atlanta, and La Grange
Nelson Company—needs service to Meridian
Southeastern Sanitary Supply Co.—needs service from Atlanta
Standard Auto Parts—needs service from Atlanta and Meridian; needs service to Atlanta
Wagnon Auto Parts—needs service from Jackson and Meridian; needs service to Jackson, Meridian, Columbus, and Atlanta
Opelika—
Davis and Dyar Supply Co.—needs service from Atlanta and Columbus
Our Industries Company—needs service from Atlanta

Selma—
Independent Lock Company—needs service to Atlanta
Tuscaloosa—
Phifer Wire Products—needs service to Jackson, Meridian, Atlanta, La Grange, and Rome
Tuscaloosa Electrical Supply Company—needs service from Atlanta
Tuskegee—
Gottleib's Furniture Store—needs service from Atlanta and Columbus
Macon Manufacturing Company—needs service from Atlanta and Columbus
York—
F. N. Grant & Sons—needs service from Atlanta
Noble Recapping Company—needs service from Atlanta and Jackson
York Manufacturing Company—needs service from Atlanta and Meridian

Georgia

Atlanta—
Atlanta Service Warehouse—needs service to Mississippi and Alabama points
Bartenfeld Electric Company—needs service from Jackson
Justrite Envelope Manufacturing Co., Inc.—needs service to Jackson and Meridian
Kawneer Company—needs service to Gadsden, Birmingham, Tuscaloosa, Montgomery, and Jackson
L. B. Foster Company—needs service from Birmingham
Muffler Factory Outlet, Inc.—needs service to Mississippi points.

Atlanta—Continued
Virginia-Carolina Chemical Company—needs service to Mississippi points
Columbus—
J. A. Kirven Company—needs service from Alabama points
Mowers & Motors Sales Company—needs service from Jackson, Selma, and Montgomery
Phillip's Hardware & Supply Company—needs service from Birmingham, Montgomery, and Jackson
Rome—
Davis Foundry & Machine Works—needs service from Birmingham; needs service to Alabama and Mississippi points
Taylor & Brewer Foundry Company—needs service to Gadsden, Montgomery, and Birmingham

Mississippi

Jackson
Beaver Bros. Furniture Company—needs service from Atlanta and Birmingham
Capital Roofing & Sheet Metal Works—needs service from Atlanta and Birmingham
Drake Saw Corporation—needs service to Atlanta, Columbus, Rome, La Grange, Birmingham, Montgomery, Selma, and Tuscaloosa
Ferguson Furniture Company—needs service from Birmingham
Jackson Tractor Parts Company—needs service from Atlanta, Columbus, Birmingham, and Montgomery
Kennington Company—needs service from Atlanta, Columbus, Marietta, La Grange, Rome, and Birmingham

Jackson—Continued
Moulden Supply Company—needs service from Atlanta
Sherwin-Williams Company—needs service from Atlanta
Smith Textile Company—needs service from Atlanta and Birmingham
Meridian—
Automotive Products Company—needs service from Atlanta and Tuscaloosa
Newton—
Feldman's Department Store—needs service from Atlanta, Marietta, Bremen, and Montgomery
W. L. McMullen Sons—needs service from Birmingham
White's Hardware & Furniture Company—needs service from Birmingham
Total: 59 witnesses

Appendix I

ALPHABETICAL LIST BY STATE AND TOWN OF THOSE SUPPORTING WITNESSES WHO TESTIFIED THAT APPLICANT'S EXISTING SERVICE WHEN UTILIZED WAS PROMPT, EXPEDITIOUS, DEPENDABLE, AND RELIABLE

Name	*Location*	*Tr. Page*
Automotive Paint & Supply Co.	Montgomery, Ala.	2813-2815
Albert Steinfeld & Company	Tucson, Ariz.	3635-3636
Krueger Air Conditioning Co.	Tucson, Ariz.	1745
Parise Department Store	Tucson, Ariz.	3724
Reward Ceramic Color Corporation	Los Angeles, Calif.	3683
United Tent and Supply Company	Los Angeles, Calif.	2887-2890
J. A. Kirven Company	Columbus, Ga.	4134-4135
Blackmon's Laundry	Alexandria, La.	4788
Weiss & Goldring Department Store	Alexandria, La.	7141-7143
Capital Armature Works	Baton Rouge, La.	3710
Daigle & Hinson	Baton Rouge, La.	7363
Gamma Industries	Baton Rouge, La.	3708
McGhee Bros. Furniture Company	Baton Rouge, La.	6910
Holiday's Department Stores	Minden, Farmersville, Marksville, New Roads, Pineville, Monroe, La.	5323-5324

Appendix I

ALPHABETICAL LIST BY STATE AND TOWN OF THOSE SUPPORTING WITNESSES WHO TESTIFIED THAT APPLICANT'S EXISTING SERVICE WHEN UTILIZED WAS PROMPT, EXPEDITIOUS, DEPENDABLE, AND RELIABLE—Continued

Name	Location	Tr. Page
H. Mickel Dry Goods Company, Inc.	Monroe, La.	7018-7019
Louisiana Machinery Company	Monroe, La.	6828-6831
Lincoln Enterprises, Inc.	Ruston, La.	6146-6147
Midwest Dairy Products Co.	Ruston, La.	6361-6362
Walpole Tire Service	Ruston, La.	5392
American Linen Service Co.	Shreveport, La.	6400
Ardis Ritchie Grocery Company	Shreveport, La.	4783-4785
Auto Color Service Company	Shreveport, La.	4511-4512
Caddo Coffee & Cafe Supply Co.	Shreveport, La.	2731
Ellis Piston Sales, Inc.	Shreveport, La.	4693-4695
L. B. Price Mercantile Co.	Shreveport, La.	3311-3312
Trickets, Inc.	Shreveport, La.	3802
Smith Venetian Blind Company	West Monroe, La.	3009
Stag Men's Shop	West Monroe, La.	5045
Evans & Sons Clothiers	West Monroe, La.	5875-5876
Madison Furniture Industries	Canton, Miss.	4933-4935
Kennington Company	Jackson, Miss.	5679
Smith Textile Company	Jackson, Miss.	630-631
A & M Wholesale Company, Dollar Store, and Southern Historical Publications.	Natchez, Miss.	5175
Natchez Photo Company	Natchez, Miss.	5351-5352
Peerless Variety Store	Vicksburg, Miss.	4825
Carpet & Linoleum Center	Oklahoma City, Okla.	2083
Bartlett-Collins Company	Sapulpa, Okla.	1344-1345
Tulsa Trim & Supply Company	Tulsa, Okla.	3968
Knight Carpet Company	Abilene, Tex.	4263
Astro Machine Products Company	Dallas (Grand Prairie), Tex.	2226
Cen-Tennial Gin Supply Company	Dallas, Tex.	4732
H. W. Baller Linen Company	Dallas, Tex.	3229
Car Parts Depot, Inc.	El Paso, Tex.	3474-3476
El Paso Towel Supply Co.	El Paso, Tex.	1687-1689
Feiner's Men's Toggery	El Paso, Tex.	5856
Industrial Uniforms, Inc.	El Paso, Tex.	3516-3517
Rainshine Top & Supply Company	El Paso, Tex.	2179
Rosen's Store for Men	El Paso, Tex.	4577-4578
Tom's Toasted Peanuts	El Paso, Tex.	3496
Triangle Supply Company	El Paso, Tex.	3756-3758
Commercial Heater Company	Fort Worth, Tex.	2304-2305
Cooke Supply Company	Fort Worth, Tex.	4008
Fakes & Company	Fort Worth, Tex.	4206-4209
Lind Paper Company	Fort Worth, Tex.	5534-5535
Southwest Petroleum Company	Fort Worth, Tex.	3371-3373
Texas Refinery Corporation	Fort Worth, Tex.	3018-3019 3061-3068
Trice Floor Coverings, Inc.	Fort Worth, Tex.	4664-4665
Melvin's Clothiers	Odessa, Tex.	6775
Sanitary Linen Service	Odessa, Tex.	5438
Oriental Rug Company	Waco, Tex.	4328-4329

Appendix J

ALPHABETICAL LIST OF OPPOSING CARRIERS

Motor carriers

Alabama Highway Express, Inc.
Atlanta-New Orleans Motor Freight Company
Baggett Transportation Co.
B.C. Truck Lines
Bowman Transportation, Inc.
Campbell Sixty-Six Express, Inc.
Central Motor Express, Inc.
Jack Cole Company
Couch Motor Lines, Inc.
Dance Freight Lines, Inc.
Deaton Truck Lines, Inc.
Dixie Highway Express, Inc.
East Texas Motor Freight Lines, Inc.
Floyd & Beasley Transfer Co., Inc.
Georgia-Florida-Alabama Transportation Company
Georgia Highway Express, Inc.
Gillette Motor Transport, Inc.
Herrin Transportation Company
Holloway Motor Express, Inc.
Hoover Motor Express Company
Mercury Freight Lines, Inc. (intervener in opposition)
Red Ball Motor Freight, Inc.
Roadway Express, Inc.
T.I.M.E., Incorporated
Transcon Lines
United Motor Freight Terminal, Incorporated
West Bros. Inc.
Western Truck Lines, Ltd.
White Truck Lines, Inc.

Railroads

The Atchison, Topeka & Santa Fe Railroad Company; Chicago, Rock Island and Pacific Railroad Company; Fort Worth and Denver Railroad Company
Illinois Central Railroad
Missouri Pacific Railroad Company
Southern Pacific Company
Southern Railway System,
St. Louis-San Francisco Railway Company
St. Louis-Southwestern Railway Company
Texas & New Orleans Railroad Company
The Texas and Pacific Railway Company

Freight Forwarders

(None of the freight forwarders formally opposed the application; their witnesses were sponsored by one or more of the rail protestants)
Acme Fast Freight, Inc.
National Carloading Corporation
Republic Carloading & Distribution Company
Universal Carloading & Distributing Co., Inc.
Western Carloading Company, Inc.,

Associations

Southern Conference of Teamsters (intervener in opposition)

(NOTE.—The italicized carriers and forwarders listed above are the party plaintiffs to the court proceeding here involved.)

Appendix K

SUMMARY OF OPPOSING MOTOR CARRIERS

White Truck Line, Inc., under appropriate authority, operates a regular-route service, both interstate and intrastate, between Atlanta and Manchester, Ga., affording 3 schedules per day, 5 days per week. Its terminal at Atlanta operates 6 days a week and interline shipments are transferred on Saturday. It sponsored exhibit 411 showing overnight service provided between Atlanta and authorized Georgia points on all traffic handled for 2 days during October 1960. White fears that some portion of its interstate revenue would be subject to diversion if application is granted.

Holloway Motor Express Company, Inc., is authorized to transport general commodities, over a described route; between Gadsden, Ala., and Austell, Ga., by way of Cedartown, Ga. It also holds irregular-route authority to transport tires, and tire fabric and related articles, between Kansas City, Kans.-Mo., and Topeka, Kans., on the one hand, and, on the other, certain points in Alabama and Georgia, including Birmingham, Gadsden, Decatur, Cartersville, Cedartown, and Atlanta. This carrier operates a substantial fleet of equipment. Pursuant to a 2-month traffic study for February-March, 1961, covering 261 shipments handled under the irregular-route authority, and 26 shipments handled under the regular-route operating rights, protestant found that all of the shipments moving over its regular-route, and 37 of those handled under its irregular-route rights, moved between points which applicant proposes to serve directly, although over a different route. Of the total number of shipments which are the subject of the

study, all but two were handled for one account at Gadsden. The transit times afforded these shipments is not of record. Protestant concedes that its business has remained "substantially the same," even after the institution of several new motor carrier services in the area over the past several years.

Jack Cole Company is authorized to operate over a regular route between Birmingham and Selma, Ala., and between Browns and Mobile, Ala., transporting general commodities. It is also authorized to transport general commodities, over irregular routes, between Birmingham, and points within 15 miles thereof, on the one hand, and, on the other, named points and areas in Pennsylvania, Michigan, Illinois, Indiana, Ohio, and Tennessee. It holds additional authority to transport specified commodities between Gadsden and Anniston, Ala., and points in Georgia, Tennessee, New York, and other eastern points. Protestants sponsored exhibit No. 423, an abstract of 313 shipments, both interstate and intrastate, including traffic handled between direct points on protestant's routes as well as that interlined with connecting carriers at Atlanta, covering a 1 week period late in March 1961. This exhibit reflects considerable 2 to 4 day delivery service for approximately 33½ percent of the traffic listed thereon handled by protestant directly between points in Alabama and Georgia, even with Saturdays and Sundays excluded from the computed transit times. Traffic moving between Atlanta and Birmingham is a very small portion of protestant's business, and it states that its business has increased during the 2 years preceding the instant hearing. Protestant fears a material diversion of direct and interline traffic originating at, destined to, or moving through its authorized Alabama service points

if the proposed service is authorized. It operates a substantial fleet of equipment.

Alabama Highway Express, Inc., has authority to transport general commodities, over irregular routes, between points in Alabama within a 65 mile radius of Birmingham, on the one hand, and, on the other, points in Georgia and Tennessee, as here pertinent. The company operates a substantial fleet of trailers and tractors, but does not operate any pick-up and delivery equipment, relying instead on contract draymen. During 1960, protestant handled a substantial volume of freight between unspecified Georgia and Alabama points, and most of this traffic consisted of volume shipments of over 10,000 pound loads each, with relatively few less-than-truckload.

Floyd and Beasley Transfer Company, under appropriate certificate authority, is primarily engaged in the transportation of textile products and machinery from numerous points in Alabama to points in Tennessee, Alabama, Georgia, and South Carolina. It also is authorized to transport, over irregular routes, general commodities from points in South Carolina, and from Atlanta, Chattanooga, Birmingham, and Pell City to Birmingham, Pell City, Alexander City, Lafayette, Sycamore, and Sylacauga, Ala. Of the total traffic that this company handled during 1960, a representative year, approximately only 40 percent thereof originated at points covered by the instant application. Protestant sponsored exhibit No. 434 covering traffic handled directly and in joint-line service between points in Alabama and Georgia during 1 week in March 1960. The greater portion of this traffic was afforded 1 and 2 days transit time in many instances, and originated at four Alabama points beyond the scope of the proposed territory, viz, Alexander City, Sylacauga, Wetumka, and Tallahassee. Most of

the traffic that witness is concerned about losing to applicant, if the proposed service is authorized, is subject to diversion only if the routings were changed from protestants' single-line service to a multiple-line service.

Dance Freight Lines, Inc., is authorized to transport general commodities, over regular routes, between Cincinnati, Ohio, on the north, and Columbus, Ga., on the south. Authorized Georgia service points include Atlanta, Columbus, Cartersville, and Dothan. A substantial fleet of tractors, trailers, and pickup trucks is operated. Protestant fears a substantial diversion of northbound traffic interlined or originating at Columbus which it handles if the application is granted. The evidence reveals that during 1960 approximately 70 percent of such traffic originating or interlined at Columbus and handled by protestant moved to protestant's on-line points. Protestant concedes, however, that this particular tonnage probably would not be subject to diversion to a multiple-line service as would necessarily be involved if the application were granted and applicant participated in the movement of this traffic.

Campbell Sixty-Six Express, Inc., is authorized to transport general commodities, generally in a north-south direction, and serves some of the Alabama and Mississippi points which would be served under the proposed authority over a route from Birmingham to Jackson, via Tuscaloosa, Ala., and Meridian, Miss. Points served by protestant which are common to those embraced in applicant's present authority include Memphis, Tenn., Greenville, Miss., Texarkana, Tex., New Orleans, La., and intermediate points between New Orleans and Memphis, via Jackson. Protestant sponsored exhibit Nos. 452 and 453 purporting to show transit times afforded on shipments

handled by a (1) during a 1 day period in October 1960, including traffic interchanged by protestant with applicant at Jackson, and (2) during November and December 1960, and January and February 1961, consisting of traffic handled for a few of the businesses supporting the instant application. These exhibits generally reflect reasonable transit times on the service provided. It appears that most of protestant's authorized service points are not located on applicant's present or proposed routes. In fact, a relatively small percentage of the total traffic shown on exhibit 452 that protestant handled involved points on applicant's present or proposed routes. However, protestant fears a diversion of traffic, especially that moving between points in Mississippi and Louisiana, on the one hand, and, on the other, points in Georgia, in which it participates through interchange at Birmingham or Mobile if the proposed service is authorized.

Georgia-Florida-Alabama Transportation Company: is authorized to transport general commodities over described routes extending from Atlanta to points in Florida, via Columbus, Ga., and Dothan, Ala. Protestant sponsored several service exhibits showing representative shipments handled by it in interchange service with connecting carriers to and from points in Mississippi, Louisiana, Texas, Oklahoma, Florida, and Alabama for a one week period in August, 1960, and from November 1960 to April, 1961. Many of the shipments depicted on two of these exhibits (Nos. 460 and 461) were subjected to between 2 and 4 day transit-time service by protestant on its segment of the moves between points in Georgia, Alabama, and Mississippi. Protestant considers traffic it is handling out of Atlanta and Columbus through interline service to points covered by this application subject to diversion. The exhibits protestant sponsored, however,

reflect a substantial volume of traffic that would involve a very circuitous routing under a two-line haul if handled by applicant, as compared with the more direct and feasible routes traversed by protestants and its connections.

East Texas Motor Freight Lines, Inc., operates under certificated authority transporting general commodities in a north-south direction from St. Louis, Mo., on the north, to Houston and San Antonio, Tex., on the south. Its service points common to those presently embraced in applicant's existing authority include Memphis, Texarkana, Shreveport, and Dallas; Fort Worth, Houston and San Antonio. On service to these Texas points, protestant connects with T.I.M.E. at Memphis. It sponsored exhibit 486 showing traffic interlined with T.I.M.E. during a representative one week period, in April 1961. The computed transit time, excluding Saturdays and Sundays, on the 58 shipments shown on this exhibit handled by T.I.M.E. and East Texas from Atlanta to Dallas averaged 4.50 days per shipment. The transit time on the 33 shipments handled from Atlanta to Houston averaged 3.54 days per shipment. The average transit time on the 43 shipments from Atlanta to San Antonio was 4.51 days. The average transit time on the 21 shipments from Atlanta to Fort Worth was 4.50 days. Recapitulating these figures, the average transit time afforded by these carriers on all the shipments listed was 4.66 days (excluding Saturdays and Sundays), as opposed to the proposed second and third morning delivery service. Protestant fears a serious diversion of traffic moving through the Memphis gateway if the application is granted.

T.I.M.E. Freight, Inc., operates generally in an east-west direction from Los Angeles, Calif., to Atlanta,

Ga., under regular-route authority to transport general commodities. The principle service points along its routes are Los Angeles, Phoenix, Tucson, El Paso, Oklahoma City, Tulsa, Memphis, Nashville, and Atlanta. Protestant sponsored approximately 12 service exhibits covering traffic which it handled during a 1 week period in April 1961. A recap and average of the transit times shown on these exhibits, and a comparison of these times with those involved in applicant's proposed schedules, is as follows:

From—	To—	Number of shipments	Average transit	Applicant's proposed service
			Days	*Days*
Los Angeles	Atlanta, Ga	595	6.65	4.00
Atlanta	Los Angeles	256	6.68	4.00
Phoenix	Atlanta	10	5.90	4.00
Atlanta	Phoenix	49	5.51	4.00
Tucson	Atlanta	2	9.00	4.00
Atlanta	Tucson	20	5.90	4.00
Atlanta	El Paso	156	4.66	3.00
El Paso	Atlanta	8	5.37	3.00
Oklahoma City	Atlanta	106	4.50	3.00
Atlanta	Oklahoma City	365	3.82	3.00
Tulsa	Atlanta	49	5.12	3.00
Memphis	Atlanta	124	2.33	2.00
Atlanta	Memphis	187	1.91	2.00

In comparison, a recap and average of the transit times shown on those service exhibits sponsored by the supporting witnesses where such time in transit is that of T.I.M.E. only, is as follows:

From—	To—	Number of shipments	Average day in transit
Atlanta	El Paso	220	5.75
Do	Oklahoma City	23	5.00
Do	Phoenix	3	6.66
Do	Tucson	17	7.29
Do	Tulsa	60	5.43
Los Angeles	Atlanta	41	6.95

Protestant fears that approximately 20 percent of its traffic into the Atlanta area could be diverted if the instant application is granted. Seventy percent of protestant's traffic is interline in nature.

Transcon Lines, is a long-haul carrier operating in an east-west direction under appropriate general commodity authority. Its principle service points are Los Angeles, San Francisco, Phoenix, Dallas, Fort Worth, Oklahoma City, Kansas City, Tulsa, Little Rock, Memphis, Birmingham, Anniston, Talledega, Atlanta, and Dallas and Houston. No terminal is maintained at Fort Worth, and pickup and delivery service at this point is handled out of Dallas. Thursdays and Fridays are regarded by protestant as non-service days, and shipments picked up on these days are billed on Fridays or Saturdays. Protestant's scheduled delivery time is as follows: between Los Angeles-Atlanta, Los Angeles-Birmingham, Atlanta-Phoenix, and Birmingham-Phoenix,—fourth morning delivery; between Atlanta and Birmingham-Dallas, and Tulsa and Oklahoma City-Atlanta and Birmingham,—second morning delivery; and between Atlanta and Birmingham—next morning delivery. Protestant sponsored two service exhibits covering, respectively, a 2 week period beginning February 27, 1961, and a one week period during April 1961. These exhibits reflect transit time service on traffic handled by protestant between the above-named points, and disclose that a majority of the shipments specified in the exhibits were delivered according to protestant's scheduled times. In contrast, a recap of the average times in transit accorded shipments handled by protestant for numerous supporting witnesses, as reflected in the numerous service exhibits sponsored by these witnesses, and a comparison

thereof with applicant's proposed schedules, is as follows:

From—	To—	Number of shipments	Average days in transit	Applicant's proposed service
Atlanta	Birmingham	2	2.00	Overnight
Do	Dallas	41	5.29	2.00
Do	Fort Worth	29	4.00	2.00
Do	Oklahoma City	5	4.20	3.00
Do	Phoenix	1	6.00	4.00
Do	Tucson	5	8.00	4.00
Do	Tulsa	36	4.44	3.00
Birmingham	Dallas	2	5.50	2.00
Do	Fort Worth	6	4.00	2.00
Do	Tucson	10	10.30	4.00
Do	Tulsa	6	3.16	3.00
Dallas	Atlanta	48	5.60	2.00
Do	Birmingham	29	4.86	2.00
Fort Worth	Irondale (Birmingham)	1	2.00	2.00
Los Angeles	Atlanta	23	6.86	4.00
Do	Birmingham	4	6.25	4.00
Oklahoma City	Birmingham	1	5.00	3.00

Protestant concedes that all of applicant's proposed schedules are feasible, and that service performed thereunder can be maintained without difficulty.[1]

West Brothers, Inc., is authorized to transport general commodities over routes extending between Birmingham and Montgomery on the east, and Jackson and New Orleans on the west. Those portions of its routes which duplicate the routes here proposed are between Birmingham and Meridian, Birmingham and Montgomery, and Montgomery and Selma. Protestant's routes between Jackson and New Orleans duplicate applicant's presently authorized routes. West sponsored a service exhibit (No. 516) which covers approximately 288 shipments handled by it as a delivering carrier in connection with another protestant, GFA, during one week in August 1960. This exhibit involves many shipments moving between points not in-

[1] See transcript of testimony, pages 8726–8727.

volved in the instant application, and purports to show that protestants afforded overnight service on 75 percent of the shipments listed, and 2 or more days-service on the remaining shipments. In computing such transit times, protestant eliminated Saturdays and Sundays in each instance. In contrast, applicant's exhibit No. 744 shows that West's average transit time afforded on 114 shipments originating at Birmingham and Montgomery and interchanged with applicant at New Orleans, between January 1960 and February 1961, inclusive, was 3.22 days. While protestant fears a material diversion of traffic if the proposed service is authorized, it concedes that a substantial volume of traffic moving between Birmingham, Jackson, Meridian, Mobile, Montgomery and New Orleans, on the one hand, and, on the other, on-line points served directly by protestant would have to be diverted from protestant's one-line to a two-line haul if applicant were to participate in handling the traffic, in the event the application is granted. It appears that protestant does not receive interline, less-than-truckload shipments at Jackson after 3:00 p.m. on any week day, or at any time on Saturdays, except possibly truckload volume shipments on Saturdays.

Roadway Express, Inc., operates over an extensive network of regular routes, transporting general commodities within the southeast and eastern United States. As here pertinent, its rights between Texas and Oklahoma points on the one hand, and, on the other, points in Alabama, Georgia, North Carolina, South Carolina, and Tennessee are involved. During the course of the instant hearing, Roadway received certificated authority to operate a "closed-door" service in the transportation of general commodities between Dallas-Fort Worth and Houston, on the one hand, and, on the other, points east of Birmingham,

restricted against service at Birmingham and points in that portion of Alabama west of U.S. Highway 231. This service was inaugurated on December 7, 1960, and for the 4 week period, February 26 to March 26, 1961, Roadway handled in excess of 2 million pounds of freight into Dallas, requiring 82 trips, and in the reverse direction, outbound from Dallas, slightly under 1,500,000 pounds. Extending this to a yearly basis, the Dallas traffic handled by Roadway would amount to approximately 45,000,000 pounds of freight. During the same period, protestant transported approximately 550,000 pounds into Houston, and 435,000 pounds out of Houston, which would amount to approximately 14,000,000 pounds of tonnage per year. Thus, within a short period of time approximating 3 months, Roadway has built up its traffic to a volume in excess of more than one million pounds of tonnage per week in operations conducted pursuant to its new authority as described above.

According to its service exhibits, Roadway has been affording the following times in transit on shipments handled between its authorized Texas points and service points in the southeast: between Atlanta and Dallas, 2.44 days; between Dallas and Columbus, 3.31 days; from Anniston, Ala., to Dallas, 3.00 days; between Atlanta and Fort Worth, 2.30 days; between Atlanta and Houston, 2.15 days; and from La Grange, Ga., to Houston, 3.00 days. Roadway fears that the instant application, if granted, would place a new competitive carrier in the area resulting in the diversion of traffic moving between its key terminals of Atlanta, Dallas, and Houston. It considers that any diversion of this traffic would result in its inability to continue providing an adequate service at smaller points between these areas. Much of the traffic which Roadway handles originates at, or is destined

to, many on-line points in North and South Carolina, Georgia, and Tennessee that are not on applicant's present or proposed routes; accordingly, any diversion of such traffic, should the proposed service be authorized, would result in a diversion from protestant's single-line service to a joint-line service in which applicant would participate.

Hoover Motor Express, Inc., is authorized to operate between Atlanta and Birmingham over the same routes between these points as here proposed. It also has authority to operate between Birmingham and Memphis, serving no intermediate points, as here pertinent. Hoover interlines freight at all of its major terminals, and opposes the application to prevent a feared diversion of traffic moving through the Memphis gateway from and to Atlanta and Birmingham. Under such a diversion, however, should the instant application be granted, traffic would have to be handled by applicant via Birmingham and Jackson over an extensively circuitous routing.

Baggett Transportation Company, transports general commodities, over both regular and irregular routes, in the States of Alabama, Georgia, and Tennessee. Its pertinent regular routes extend between Atlanta and Birmingham, via Anniston, and via Gadsden and Rome, and between Birmingham and Montgomery and Columbus. Its irregular-route authority embraces a radial area, from Montgomery to points in Alabama within 125 miles of Montgomery, involving a non-scheduled service to such points as Demopolis, Opelika and York. Protestant's primary operations consist in the transportation of explosives throughout 44 States under appropriate certificated authority therefor. Protestant's service exhibit (No. 540), covering a 1 week period in February 1961, and rebuttal exhibit (No. 542), showing traffic handled for

a few of the supporting shippers and receivers, indicate that many shipments handled directly by protestant between relevant Alabama and Georgia points received an average time in transit of between 2 and 4 days.

United Motor Freight Terminal, Inc., operates over a regular route between Atlanta and Birmingham, serving the one intermediate point of Anniston, Ala. United interlines freight with Mercury at Birmingham. Its service exhibit covers the movement of all traffic for one day in October 1960, showing same day or next morning deliveries on many of the shipments listed, and it sponsored another exhibit depicting overnight service on almost all shipments handled for a few of the supporting witnesses for the month of October 1960. Protestant fears a material diversion of traffic handled in conjunction with Mercury if the instant application is granted. However, many of the shipments listed on protestant's exhibits moved to Mercury's on-line points that would not be directly served by applicant under its proposal, and that were not those points about which the supporting witnesses served are concerned.

Bowman Transportation, Inc., holds irregular-route, general commodity authority to operate between any point in Georgia, on the one hand, and, on the other, Memphis, through the gateway of Cedartown, Ga., and any point in Alabama, through the use of several gateways. It also holds such authority to operate from any point in North and South Carolina to any point in Alabama, Georgia, and Tennessee. In addition, it is authorized to perform a regular-route operation between Chattanooga and Birmingham via Rome. Protestant's service exhibit consists of a list of shipments tendered to applicant at Memphis during September and October 1960, and reflects considerable 2

to 5-day service afforded by protestant on its segment of the moves between such points as Atlanta and Memphis, and Gadsden and Memphis. Although protestant is fearful that a substantial volume of traffic which it is now handling would be subject to diversion should the application be granted, it is noted that much of this traffic does not move between points on applicant's present or proposed routes, and, further, that if such traffic were diverted from protestant's single-line, direct service to applicant's service it would involve movements in two or three line-hauls.

Deaton Truck Line, Inc., holds authority to transport general commodities over a regular route between Atlanta and Talledega, Ala., via Anniston, serving all intermediate points in Alabama only. Under irregular-route authority, protestant may transport general commodities between Birmingham and points within a 65 mile radius thereof, on the one hand, and, on the other, New Orleans and the entire State of Mississippi. By joining its irregular and regular-route authorities, protestant asserts that it can handle shipments from Atlanta to New Orleans and all points in the State of Mississippi. The evidence indicates that much of the traffic handled by protestant in single-line service would, if diverted to applicant under the proposed service, have to move in two and three-line hauls via applicant and other carriers.

Red Ball Motor Freight, Inc., and *Couch Motor Lines, Inc.*, operate a scheduled, through-trailer service between Dallas-Fort Worth and Jackson by way of Shreveport, La. Red Ball serves numerous points in Texas, Oklahoma, and other States not here pertinent. Couch is competitive with applicant at some involved Louisiana points, and at Natchez and Jackson, Miss. Its scheduled service operates from Monday through

Friday only, and it interlines with Dixie on traffc moving to and from southeastern points.

Atlanta-New Orleans Motor Freight Company, is authorized to transport general commodities, over regular routes, between Atlanta and Mobile, via Montgomery, serving all intermediate points, and between Mobile and New Orleans serving all intermediate points. Protestant holds itself out to render an overnight service between Atlanta and Montgomery, and Montgomery and New Orleans, and second day service between Atlanta and New Orleans. Protestant fears a diversion of traffic moving directly between these three major points, and of traffic which is interchanged at these points, if the application is granted. A-NO submitted no service exhibit. Recap of the transit times on shipments handled by protestant alone for applicant's public witnesses, as reflected in the service exhibits sponsored by such witnesses, is as follows:

From—	To—	Number of shipments	Average days in transit	Exhibit numbers
Atlanta	Montgomery	30	3.33	20, 133, 134, 140, 176, 281, 282
Metairie (New Orleans)	Montgomery	1	3.00	282
New Orleans	Montgomery	12	2.33	20, 193, 282

Georgia Highway Express, Inc., and *B-C Truck Lines, Inc.,* are operated under common management. The former transports general commodities, over regular routes, from Chattanooga to Atlanta, serving intermediate points, from Atlanta to Columbus, serving intermediate points, and from Atlanta to other Georgia points not here involved. The latter carrier is authorized to transport general commodities, over irregular routes, between La Grange, on the one hand, and, on the other, all points in Alabama and Georgia. Protestants sponsored several service exhibits showing ship-

ments moved on selected days during April 1961, many of which were afforded overnight or second day delivery. A substantial diversion of traffic is feared if the instant application is granted.

Herrin Transportation Company, operates generally between Jacksonville, New Orleans and Houston, on the south, Memphis on the north, and Dallas on the west. It serves no point common with any point on the proposed routes, although several of its service points are on applicant's present routes. It competes for traffic moving between Atlanta, Birmingham, and other points on the proposed routes, on the one hand, and, on the other, points served by it and points beyond its line, and handles such traffic through the New Orleans and Memphis gateways.

Gillette Motor Transport, Inc., and *Western Truck Lines Limited,* operate as a common system from Houston, Dallas, and Kansas City, on the east, to Los Angeles, on the west. Traffic to and from the involved southeastern area is interchanged at Houston, Oklahoma City, Kansas City, Memphis, or St. Louis, depending upon the particular origin or destination in the west. Presently, their principal interline carrier on traffic moving to or from the proposed area is Herrin.

Dixie Highway Express, Inc., is authorized to transport general commodities, over regular routes which duplicate those here requested. On its route between Birmingham and Atlanta, via Gadsden and Rome, service is restricted to the handling of shipments of 5,000 pounds or more. The flow of traffic over Dixie's routes is generally heavier from east to west than in the opposite direction. An exception is at Montgomery where traffic is heavier eastbound to Atlanta than in the opposite direction. Approximately 90 percent of the traffic handled by Dixie is less-than-truckload.

Freight is interlined at Jackson and at New Orleans primarily, and also at Atlanta, Birmingham, and Montgomery on traffic moving to and from points east of Dixie's southeastern routes. Protestant sponsored exhibits 621 through 625 purporting to show applicant's transit time on all traffic tendered to Dixie at Jackson for the months of April and October 1959, April and October 1960, and March 1961, respectively. Protestant's computation of these times in transit includes Saturdays and Sundays, regardless of whether such intervening weekends affected applicant's ability to interline the shipments. In rebuttal, applicant sponsored exhibits 746 through 750, computing times in transit with Saturdays and Sundays eliminated where such days affected the interchange of traffic with Dixie; that is, where a shipment was picked up by applicant on a Friday and could not be interchanged with protestant until the following Monday, applicant alleges that the time in transit in such instances should only be considered as one day.[2] Dixie also sponsored exhibits 626 through 663 purporting to show satisfactory transit times it provided on shipments handled for some of the supporting shippers and receivers, covering a 15-month period in the case of the involved shippers (January 1960–March 1961), and a 3-month period for the involved receivers (January 1961–March 1961). While these exhibits show that Dixie generally rendered adequate service to the involved shippers or receivers on the traffic listed, the defect in these exhibits is that they do not, in many instances, relate to points to or from which problems in Dixie's service have been experienced, as reflected.

[2] Applicant's position in this respect is well taken and is a common practice in that segment of the motor carrier industry here involved.

in the service exhibits sponsored by the involved witnesses.[3] Further, some of these exhibits (Nos. 632, 633, 634, 635, 642, 646, and 648) show excessive times in transit provided by Dixie alone or in connection with various combinations of joint-line service in which it participated. Significantly, a recap of the service exhibits of all the supporting witnesses who utilized Dixie's service shows that the average transit time afforded by Dixie on 561 shipments, which it handled directly between points on the proposed routes, was 3.60 days, with the actual times ranging from overnight to 6 days in transit.

Protestant further sponsored a 231 page exhibit, No. 665, showing a considerable amount of 1 and 2 day service afforded on all shipments handled by it between points on the involved routes for a one week period in April 1961, with Saturdays and Sundays excluded from the computed transit time. Exhibit Nos. 752 and 753, sponsored by applicant in rebuttal, however, cover all shipments interlined to applicant by Dixie between January 1960 and February 1961 at Jackson and New Orleans, respectively. These exhibits of applicant show that Dixie's operations between Atlanta and New Orleans consume an average time in transit of 3.57 days on such traffic (273 shipments); 3.17 days on 51 shipments between Birmingham and New Orleans; and 4.33 days on 18 shipments from Montgomery to New Orleans. Similarly, at Jackson, Dixie's average time in transit on 2,979 shipments from Atlanta to Jackson during this period was 2.62 days, and 2.46 days on 3,185 shipments from Columbus. Significantly, applicant proposes second morning delivery between all points on the proposed route and

[3] See, e.g., exhibit Nos. 182, 292, 191, 151, 265, 178, 125, 302, 20, 159, 221, 261, 148, 34, 249, 270, 268, 13, 176, 301, and 288.

New Orleans, and overnight service between such points and Jackson.

Dixie's major operations are conducted 5 days a week, with somewhat curtailed operations on Saturdays and Sundays. It asserts that that traffic which it handles during periods with intervening week ends frequently must be delivered on Tuesdays for several reasons; one, because of the Monday backlog, Dixie frequently cannot deliver until Tuesday, and secondly, because many times consignees purportedly do not want their freight delivered on Mondays because of their own backlog problems. According to the testimony of many of the supporting witnesses in the instant proceeding, however, these situations do not appear applicable to their operations as described. Protestant fears a material diversion of traffic that it handles both directly as well as traffic moving to and from points west of its route in which it participates in joint-line service, if the instant application is granted. Protestant has enjoyed a continuous and substantial growth in revenues derived from its operations for the past 10 years, according to exhibit 667 which it sponsored, even in the face of added competition experienced in the affected areas.

Ryder Truck Lines, Inc., and *Gordons Transports, Inc.,* are not protestants to the instant application but were called as witnesses on behalf of protestant motor carriers. Ryder's regular-route, general commodity authority permits the performance of single-line service between many points involved in the instant proposal, and its routes extend to Shreveport and Houston on the west. According to the service exhibits sponsored by the supporting shippers and receivers herein, approximately 840 shipments handled for many of these witnesses by Ryder were, in an overwhelming number of instances, accorded excessive

times in transit, ranging from an average of 6.69 days on 65 shipments handled from Atlanta to Baton Rouge, and an average of 4.44 days on 79 shipments handled from Birmingham to Monroe, La., to 6.09 days on 21 shipments from Gadsden, Ala., to Ruston, La.

With the acquisition of England Brothers Truck Line, Gordons is able to perform service between Atlanta and Birmingham, on the one hand, and, on the other, Dallas, through the gateway of Memphis, Tenn. No evidence of protestant's ability to perform such service is disclosed in the instant record.

Mercury Freight Lines, Inc., operates over regular routes between Birmingham, on the north and east, and Mobile, Ala., and Pensacola, Fla., on the south, with authority to serve numerous intermediate points including Selma, Ala. Shortly before the hearings herein commenced, Mercury was granted certificated authority to perform general commodity operations between its existing points, on the one hand, and, on the other, Dallas, Fort Worth, Houston, and Beaumont, Tex. Thus, Mercury, like Roadway, is authorized to perform a "closed-door" service between its authorized Alabama points, on the one hand, and, on the other, the above-named Texas points. This new operation commenced on a regular daily basis in January 1961. The service exhibits sponsored by Mercury indicate that during a 2 week period in April 1961, it handled, between its three southwestern terminals of Dallas, Fort Worth, and Houston, and its southeastern terminals of Birmingham, Selma, Mobile, and Pensacola, a total of 3,055 shipments with an aggregate weight of approximately 4,000,000 pounds. Mercury physically interchanges freight and interlines trailers with many connecting carriers. It can provide

no single or joint-line service, however, on shipments moving between points on applicant's present routes in Mississippi and Louisiana, on the one hand, and, on the other, points on the proposed routes in Alabama and Georgia. Thus, no service could be provided for approximately 136 of the supporting shippers or receivers, most of whom are located at relevant points in Mississippi and Louisiana. According to its service exhibits, Mercury has been affording its scheduled, second-day deliveries on service performed between Birmingham, and Dallas-Fort Worth and Houston, and fears that any additional grant of authority duplicating its operating rights would be detrimental to its maintenance of adequate service between Birmingham and the involved Texas points.

Central Motor Express, Inc., adduced no evidence. It operates over regular routes between Anniston, Gadsden, and Birmingham, on the south, and Knoxville, Tenn., on the north, through Chattanooga.

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 17th day of January A. D. 1966

No. MC–1968 (Sub-No. 73)

BRASWELL FREIGHT LINES, INC., EXTENSION—ATLANTA

(Renumbered and Reentitled)

No. MC–111383 (Sub-No. 16)

BRASWELL MOTOR FREIGHT LINES, INC., EXTENSION—ATLANTA

It appearing, That on July 1, 1964, the Commission, division 1, made and filed its report 95 M.C.C. 457, and

order in the above-entitled proceeding, granting the application in part;

It further appearing, That by order of December 28, 1964, Appellate Division 1 denied petitions by certain protestants for reconsideration of the report and order of July 1, 1964;

It further appearing, That on June 23, 1965, the United States District Court for the Southern District of Mississippi, Eastern Division, entered its judgment in *Dixie Highway Exp., Inc.* v. *United States,* 242 F. Supp. 1016, setting aside the Commission's report and order of July 1, 1964, and the Commission's order of December 28, 1964, and remanding the above-entitled proceeding to the Commission for further consideration in accordance with the views expressed in its opinion therein;

It further appearing, that the Commission, by order of July 19, 1965, vacated and set aside the orders of July 1, 1964, and December 28, 1964, and reopened the above-entitled proceeding for further consideration;

And it further appearing, That further consideration of the matters and things involved has been given, and that the Commission on the date hereof, has made and filed its report on further consideration herein containing its findings of fact and conclusions thereon, which report and the said report of July 1, 1964, are hereby referred to and made a part hereof;

It is ordered, That said application, except to the extent granted in the said report on further consideration, be, and it is hereby, denied.

It is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act within 90 days after the date of service hereof, or within such additional time as may be authorized by

the Commission, the grant of authority made in said report on further consideration shall be considered as null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

APPENDIX D

United States District Court, Southern District of Mississippi, Eastern Division

Civil Action No. 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., PLAINTIFFS

v.

UNITED STATES, ET AL., DEFENDANTS

JOHN MINOR WISDOM, Circuit Judge; GRIFFIN B. BELL, Circuit Judge; WILLIAM HAROLD COX, District Judge

COX, *District Judge:* This is a statutory suit in a three judge court to review a decision and resulting order of the Interstate Commerce Commission entered on an application of the Braswell Motor Freight Line system for a certificate of public convenience and necessity for the extension of this franchise to haul certain commodities by motor truck from Jackson, Mississippi, into and through Alabama and into Georgia. This application was initially heard and unanimously denied by Joint Board No. 340, composed of a commissioner from the Alabama Public Service Commission and a commissioner from the Georgia Public Service Commission. That joint board heard witnesses and received testimony in this case for fourteen and one-half weeks. Three hundred eleven witnesses appeared before the board and either testified or their testimony was stipulated. Seven hundred thirty exhibits were admitted in evidence. The transcript of the testimony consumed ten thousand nine hundred fifty-five pages. This application was

opposed by twenty-nine affected motor carriers and seven railroads. Much time was devoted to the question of the "need" of these numerous shipper witnesses. The Interstate Commerce Commission evinced and expressed much interest in the large number of these witnesses who testified.

The joint board made a detailed finding of facts and conclusions of law on this application and recommended that the application be denied. Its report was accompanied by a proposed order to that effect. The board, among other things, found that: "present service is adequate and that the institution of a new carrier service would greatly impair the services of the carriers." The Interstate Commerce Commission on appeal reversed that decision with one of the three member panel dissenting. It is the final action of the Interstate Commerce Commission on such application that is here for review by this Court. This Court granted the plaintiffs a temporary injunction and the case is now before the Court on its merits for a permanent injunction.

Significantly, two of the opposing carriers (Roadway Express and Mercury Freight) were granted franchises by the commission to haul motor freight in the subject area only five days before the commencement of this hearing on the Braswell application on November 28, 1964. Braswell offered shippers a nine cent cheaper rate. Braswell proposed single line services on a very attractive time schedule which attracted and intensely interested his witnesses.

A fair abridgement of the joint board's report and order follows for a correct understanding of the commission's action.

The board said that it took into consideration the substantial industrial growth both in the area applied for and in the area served by the applicant and its

parent company; and that it gave consideration to the additional certificates that have been issued during the last three months of 1960. (page 7).

The board said that the evidence did not show that any of the approximately two hundred eleven public witnesses giving testimony in support of this application stated that service had ever been refused them or that they had been unreasonably delayed in receiving pickups. After analyzing the testimony, it was noted that the supporting witnesses' principal desire was for a *faster service,* and each were supporting the application on the promise of the scheduled service outlined in Appendix A. The joint board said it was not convinced that the applicant could maintain the schedules as proposed in this application (Appendix A) under regular operating conditions to any substantial degree more than the protestants had always met their holding out transit time. The applicant did not elect to establish through any probative evidence the fact that they are now maintaining these same schedules over their present operation, and for its conclusion the joint board had to rely on data taken from the numerous exhibits filed in this application where Braswell had participated in the movement. Analysis of these shipments revealed that Braswell had not always made the schedules on their present operation, and their service was in line with other carriers operating within the same territory. (page 9)

The report further stated: "The joint board does not agree that the present service is inadequate to meet the reasonable need of the shipping public and is convinced that placing of another through carrier in operation would greatly impair the service of the now existing carrier." (page 11)

The board concluded: "The joint board is of the opinion that the reasonable needs of the shipping public are being complied with by the existing carriers and any additional grant of authority would be detrimental to existing carrier service. (Hancock Trucking, Inc., Extension, Gulf and West Coast—62 MCC 513 PP536.)"

"Since Roadway Express, Inc., and Mercury Freight Lines, Inc., have been granted authority after this application was in process of being heard, these carriers have the right to prove they can provide the service needs before any additional grant of new authority is issued. (The Baltimore Motor Coach Company Extension-Charles-Town Race Track—78 MCC 617; Eldon Miller, Inc., Extension-California—79 MCC 758; Safeway Trails, Inc., Extension-Atlantic City, N.J., Docket No. 84728, Sub 21 [not in printed form] and Wilson v. United States of America, 114 F. Supp. 814, 815.)"

"The applicant has failed to show a consistent and recurring deficiency in the present service. (Kingsway Transport Extension-Niagara Falls, N.Y., 84 MCC 45.)"

"Also, the applicant failed to show a need for single line service and evidence presented was mere desire or preference. (Oklahoma-Louisiana Motor Freight Co., Extension-Ennis, Texas, 77 MCC 77; and T.S.C. Motor Freight Lines, Extension-New York, 62 MCC 497.)"

No question of financial responsibility of the applicant is presented here for the reason that the applicant merged with its parent company and thereby rectified any criticism of its financial structure after the joint board's decision.

The commission said in its report: "We consider that the board's rulings at the hearing on all sub-

stantial issues were correct and that the statements of fact in its report are comprehensive and objective. We find that the board's statements of fact are correct in all material respects, and, except as modified herein, we adopt them as our own by reference. The facts are restated here solely to the extent necessary to an understanding and disposition of the issues."

While it is recognized that there must necessarily be some limitations upon specifics in a finding of facts which influence or control commission action, it would appear irrefragable that in view of the commission's adoption generally of the board's findings, that the board was obliged to state with more than ordinary specificity any contrary finding of facts available to it in this record to influence its decision. We are not favored with any such findings in this record. The commission further stated: "As a group, protestant motor carriers have been expanding their equipment and facilities and have been improving their services. However, a large percentage of shipments moving between points in the *considered territories* still require three of (sic) four interchanges enroute." There does not appear to be any substantial support in this record for that statement, and counsel for defendants at the bar were unable to point out any to this Court in the record.

While this Court has its statutory limitations upon the scope and range of review in cases of this kind [5 U.S.C.A. § 1009(e)]; still, the Interstate Commerce Commission does not possess any carte blanche authority to disregard positive, undenied, credible testimony and binding judicial opinions and applicable legal precedents in these cases. While a protesting carrier does not have any property right in his franchises in the conventional sense which will deprive the commission of the right and power and

sometimes duty to award a competing franchise to another carrier; still the requirements of consistency in the public interest and due process in such respect must be observed. Were it otherwise, the Interstate Commerce Commission would fail of its purpose and duty to the public.

The Interstate Commerce Commission has made no basic finding as to the inadequacy of the service presently being rendered by these carriers in the subject area to authorize or justify its legal conclusion in this case. Indeed, it may be well doubted that it could have properly done so with any factual support therefor, particularly as to Roadway Express and Mercury Freight. On the contrary, by the express adoption generally of the joint board's findings and conclusions, which it has not refuted or disavowed or even disparaged, the Interstate Commerce Commission has said that there is no inadequacy of service by the present carriers in the subject area and that to grant a franchise to another carrier therein would be hurtful to the other carriers and the public interest. Yet, in spite of those facts and circumstances, the commission by a two to one vote has reversed the unanimous decision of the joint board and has decided to grant Braswell a franchise to haul certain designated commodities in the area with some restrictions.

After the applicant merged with its parent company, the commission said: "*In the circumstances,* we conclude that applicant is fit and able, financially and otherwise, to conduct the proposed service." No question of financial ability is thus presented for review.

The commission has dealt with this record throughout its report in vague and nebulous terms. Without making any finding of facts from the record to support its conclusions, it has dealt with this prob-

lem in its entirety in generalities without favoring us with any facts to be found in this record to support the conclusion which they reached. Although the commission expressly adopted the board's statements of fact as being correct in all material respects; and without making any specific findings by the commission which are supported by this record, the commission has nevertheless proceeded to disapprove the sound conclusions based on such findings to the contrary. The promises, expressed hopes and the assurances of the applicant were obviously treated by the commission as evidence without factual support of its ability to provide such services, if indeed, any actual need existed therefor. The franchises to Mercury and Roadway were so new that "few of the shipper witnesses had any experience in the use of these new services." The commission's reaction is not noted or indicated to the fact that "one shipper voiced a reasonable complaint which concerned services received from Mercury." The commission's report recites: "However, a large percentage of shipments moving between points in the considered territories still require three of (sic) four interchanges enroute." Nothing is contained in this voluminous record which has been cited by counsel to support that observation or reasoning. The commission said that other carriers serving "these territories" have continued to realize substantial increases in traffic, even subsequent to the granting of the Mercury and Roadway applications; hence, the commission concluded that a granting of this application substantially as sought "should not" adversely affect protestants to a material extent. Further, without factual support cited from this record and in the face of its adoption of the board's finding to the contrary, the commission said: "More-

over, the preservation of the status quo should not, in this instance, outweigh the overwhelming evidence of 'shipper need' for improvements in the service now available." Commissioner Bush dissented on the ground that he was not convinced that a need had been shown for the proposed service, "especially in view of the recently instituted operations of Roadway and Mercury, etc."

The Interstate Commerce Commission in this case had the right and duty to review this record and to make its own determination thereon. It had a positive duty to these litigants and the public to make its findings and conclusions from the record with sufficient clarity and specificity to allow for an intelligent grasp and understanding of the basic facts in the record relied upon by the commission to support its conclusions and ultimate decision. Such findings and conclusions by the Interstate Commerce Commission are lacking in this case and it is apparent to this Court that its conclusions are without substantial support in this record; otherwise, it would have been more clearly and specifically stated in its record. Under the circumstances in this case the factual basis and reasoning of the Interstate Commerce Commission thereon to reach its decision in this case is left for us to conjecture and guess. It must be remembered that the commission is an expert administrative body set up by Congress in order to provide adequate economic fact finding and analyses of complicated problems such as the ones here presented. The integrity of this congressional scheme is violated by the commission entering and the courts affirming broad industrywide orders, the meaning and bases of which are unclear and the factual and economic analysis of which is inadequate. The Supreme Court on this question said:

"We have repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest."[1]

This Court is interested on this review in determining from this record whether or not the commission's decision is supported by substantial evidence in this record; and whether or not its decision is responsive to uncontroverted, credible evidence in this record; or is legally arbitrary and capricious by reason of failing to respond to and act upon any such credible and undisputed evidence and testimony.[2] Such findings and conclusions must be based upon the record and upon fair inferences and must support and justify the subsidiary findings and conclusions of the commission based thereon.

The Commission in this case was much impressed with the expressed "needs" of these three hundred eleven shipper witnesses. It was doubtless influenced if not controlled by such consideration without making any finding or determination as to whether such needs were related to sales needs of these vendors or their transportation needs. Yet, before the commission may give way to a shipper's needs it must first determine that those needs pertain to a transportation service.[3]

In this case there appears no substantial evidence to support the conclusion that any actual transportation need or necessity existed for the granting of this franchise. A mere scintilla of evidence plus an infer-

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[1] *Colorado-Wyoming Gas Company* v. *Federal Power Commission*, 324 US 626; 65 S.Ct. 85.

[2] *Nashua Motor Express, Inc.* v. *United States*, 230 F. Supp. 646; *Mayfield Sons Trucking Company* v. *United States*, 234 F. Supp. 655; 5 U.S.C.A. § 1009(e).

[3] *Baggett Transportation Co., et al* v. *United States, et al*, 231 F. Supp. 905, 908.

ence therefrom would not arise to the dignity of substantial evidence to support its decision here.[4]

This report of the commission stands alone without record support of any idea that there were any inadequacies in existing service. The adopted finding of the commission is to the contrary. There is no evidence in this record that existing carriers were afforded an opportunity to rectify any such deficiencies in their services. Yet, on April 23, 1965, the Interstate Commerce Commission said: "We have repeatedly stated that existing carriers normally should be accorded an opportunity to transport all of the traffic they can handle in an adequate and efficient manner without the added competition of a new operation."[5] The doctrine of stare decisis does not apply to decisions of administrative bodies, but consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.[6] A healthy and efficient operation is extremely important to the public interest. One of the basic ingredients in the determination of public necessity is the inadequacy of existing service.[7] The national transportation policy is intended to promote economical and efficient service and foster wholesome and basically sound economical conditions in transportation among the carriers.

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[4] *Consolidated Edison Co.* v. *International Labor Relations Board*, 305 US 197; 59 S.Ct. 206. *International Labor Relations Board* v. *Columbia Enameling and Stamping Company*, 306 US 292; 59 S.Ct. 501; *Universal Camera Corporation* v. *International Labor Relations Board*, 340 US 474; 71 S.Ct. 456.

[5] *United Van Lines, Inc., Extension-Alaska*, No. MC-67234.

[6] *National Labor Relations Board* v. *Mall Tool Co.*, (7CA) 119 F. 2d 700.

[7] *Hudson Transit Lines* v. *United States*, 82 F. Supp. 153, affirmed 338 US 802; 70 S.Ct. 59.

It is the view of this Court without prolonging this opinion that the report and order of the Interstate Commerce Commission thereon is not supported by the record and does not measure up to indicated standards and that such report and order should be vacated and annulled. The Interstate Commerce Commission should be enjoined from issuing a permit or franchise to the applicant for the reasons stated; and this proceeding should be remanded to the Interstate Commerce Commission for its reexamination and study and further action thereon not inconsistent with the opinion of the Court herein. The temporary injunction heretofore issued in this case will be made permanent. The bond for the temporary injunction will be discharged. A judgment accordingly may be presented for entry.

JUNE 23, 1965.

JOHN MINOR WISDOM,
United States Circuit Judge.
GRIFFIN B. BELL,
United States Circuit Judge.
WILLIAM HAROLD COX,
United States District Judge.

APPENDIX E

United States District Court, Southern District of Mississippi, Eastern Division

Civil Action No. 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., PLAINTIFFS

v.

UNITED STATES, ET AL., DEFENDANTS

FINAL JUDGMENT AND DECREE

The above-entitled action having come on for hearing on May 14, 1965, before this Court, constituted as a three-judge District Court under Section 2284 of the Judicial Code, 28 U.S.C. § 2284, and this Court on June 23, 1965, having entered its opinion finding to be erroneous for the reasons set forth by this Court the following: (a) the report and order of the defendant Interstate Commerce Commission, dated July 1, 1964 in said Commission's Docket No. MC–1968, Sub 73 (renumbered Docket No. MC–111383, Sub No. 16) and (b) the order of said Commission dated December 28, 1964 in said proceeding insofar as it denied petitions for reconsideration, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED (a) that the report and order of the defendant Interstate Commerce Commission dated July 1, 1964 and the order dated December 28, 1964 insofar as it denied petitions for reconsideration in Docket No. MC–1968, Sub No. 73 (renumbered Docket No. MC–111383, Sub No. 16) be and the same are hereby vacated, annulled, and set aside; (b) that the defendant Interstate Commerce

Commission be and it is hereby permanently enjoined from issuing a certificate of public convenience and necessity to the applicant based on said report and order in Docket No. MC–1968, Sub No. 73 (renumbered Docket No. MC–111383, Sub No. 16), (c) that this proceeding be and it is hereby remanded to the Interstate Commerce Commission for its reexamination and study and further action thereon not inconsistent with the opinion of this Court herein, and (d) that the bond for temporary injunction, in this action, approved by this Court on March 12, 1965 be and it is hereby discharged and annulled.

Dated at Jackson, Mississippi, this 16th day of July 1965.

JOHN MINOR WISDOM,
United States Circuit Judge.
GRIFFIN B. BELL,
United States Circuit Judge.
WILLIAM HAROLD COX,
United States District Judge.

A true copy, I hereby certify.

LOYCE E. WHARTON, *Clerk.*
By C. THOMAS, *Deputy Clerk.*

Dated July 16, 1965.

APPENDIX F

CORRECTED ORDER

Service date, December, 31, 1964

At a Session of the Interstate Commerce Commission, Division 1, Acting as an Appellate Division, held at its office in Washington, D.C., on the 28th day of December, A.D., 1964

No. MC–1968 (Sub-No. 73)

BRASWELL FREIGHT LINES, INC., EXTENSION—ATLANTA

(El Paso, Tex.)

Renumbered and Reentitled

No. MC–111383 (Sub-No. 16)

BRASWELL MOTOR FREIGHT LINES, INC., EXTENSION—ATLANTA

(El Paso, Tex.)

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Petition of Mercury Freight Lines, Inc., protestant, filed September 22, 1964, for reconsideration;

(2) Petition of Jack Cole Company, protestant, filed September 23, 1964, for reconsideration;

(3) Petition of Roadway Express, Inc., protestant, filed October 2, 1964, for reconsideration;

(4) Joint petition of 12 railroad protestants, and Dixie Highway Express, Inc., and 17 other named motor-carrier protestants, filed October

5, 1964, for reconsideration, or, in the alternative, for oral argument;

(5) Petition of Southern Conference of Teamsters, intervener, filed September 23, 1964, for reconsideration, and further hearing;

(6) Joint petition of Western Carloading Company, Inc., Universal Carloading and Distributing Company, National Carloading Corporation, Republic Carloading & Distributing Company, and Acme Fast Freight, Inc., filed September 22, 1964, for leave to intervene;

(7) Tendered joint petition of petitioners named in (6) above, submitted for filing September 22, 1964, for reconsideration, or, in the alternative, for oral argument;

(8) Reply by applicant, filed November 16, 1964, to petition in (6) above, embracing a motion to strike tendered petition in (7) above, and reply thereto;

(9) Reply by applicant, filed November 16, 1964, to petitions in (1) through (5) above;

and good cause appearing therefor:

It is ordered, That Western Carloading Company, Inc., Universal Carloading and Distributing Company, National Carloading Corporation, Republic Carloading & Distributing Company, and Acme Fast Freight, Inc., be, and they are hereby, permitted to intervene in the said proceeding with the right to appear and participate in all further proceedings therein;

It is further ordered, That the tendered petition in (7) above, be, and it is hereby accepted for filing;

It is further ordered, That the motion to strike embraced in the reply in (8) above, be, and it is hereby, overruled, for the reason that petitioners have shown an interest in the proceeding, and their petition for reconsideration is entitled to consideration on its merits;

It is further ordered, That in all other respects the petitions be, and they are hereby, denied, for the reason that the findings of Division 1 in its report of July 1, 1964, are in accordance with the evidence and the applicable law, and that no sufficient or proper cause appears for reopening the proceeding for reconsideration, oral argument, or further hearing;

And it is futher ordered, That, unless compliance is made by applicant with the requirements of Sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service of this order, or within such additional time as may be authorized by the Commission, the grant of authority made in the report and order entered herein on July 1, 1964, shall be considered as null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, Division 1, Acting as an Appellate Division.

[SEAL] HAROLD D. McCOY,
Secretary.

APPENDIX G

Interstate Commerce Commission

No. MC-1968 (Sub-No. 73)

BRASWELL FREIGHT LINES, INC., EXTENSION—ATLANTA

Decided July 1, 1964.

REPORT OF THE COMMISSION

Division 1, Commissioners HUTCHINSON, WEBB, and BUSH

HUTCHINSON, *Commissioner:* Exceptions were filed by applicant to the order recommended by the joint board, and protestants and interveners replied. Our conclusions differ from those recommended.

By application filed April 28, 1960, as amended, Braswell Freight Lines, Inc., of El Paso, Tex., seeks a certificate of public convenience and necessity authorizing motor common carrier transportation of general commodities with exceptions, over a system of regular routes extending between Jackson, Miss., Atlanta and Columbus, Ga., and Birmingham and Montgomery, Ala. Except for two alternate routes between Birmingham and Columbus and Montgomery, applicant seeks to serve all points within 5 miles of the routes sought and all points within 15 miles of the principal points situated on the routes.[1]

Applicant has existing regular route operations between Jackson on the east and Dallas-Fort Worth,

[1] The specific authority is set forth in appendix A. The opposing motor carriers, freight forwarders, and railroads are named in appendix B.

Tex., and Tulsa and Oklahoma City, Okla., on the west, and, in addition, its routes extend from New Orleans, La., on the south, through Jackson to Memphis, Tenn., on the north. Applicant is the wholly owned subsidiary of Braswell Motor Freight Lines, Inc., and this parent company holds regular-route authority between Dallas-Fort Worth and Houston, Tex., and between those points and San Antonio and El Paso, Tex., Phoenix, Ariz., and Los Angeles, Calif. By order of the Commission, Finance Board Number 1, of May 5, 1964, in No. MC-F-8655, Braswell Motor Freight Lines, Inc.—Merger—Braswell Freight Lines, Inc., the merger of the operating rights and properties of applicant into the parent company was authorized. A grant of the authority sought here would enable applicant to provide transportation (*a*) between points on the considered routes in Mississippi, Alabama, and Georgia, and (*b*) between points on the considered routes, on the one hand, and, on the other, points on the routes presently served by applicant and its parent company.

Extensive hearings were held on the application. Testimony was received from, *inter alia*, witnesses representing 311 supporting shippers,[1] 13 supporting motor carriers which propose to perform connecting services with applicant in conjunction with the routes sought here, and a large number of motor carriers, railroads, and freight forwarders opposing the application. In all, 14½ weeks were devoted to the hearing; the transcript of testimony extends to 10,955 pages; and 750 exhibits were admitted into evidence.

The joint board found that applicant has failed to show that it is financially fit to provide the proposed

[1] The testimony of 68 of these shipper witnesses was stipulated.

service and, further, that it has failed to establish that the supporting shippers need this new motor carrier operation in view of the services already available from authorized carriers serving the affected territories. Accordingly, it recommended that the application be denied.

On exceptions applicant asserts that the joint board erroneously refused to allow shipper witnesses to testify concerning their adverse transportation experience in the use of existing carriers without corroborating their testimony from shipping documents or their equivalent, contrary to the decision in *Hancock-Trucking, Inc., Ext—Gulf and West Coast Routes,* 62 M.C.C. 513; that the board during a substantial part of the hearing improperly refused to allow shipper witnesses to testify that they "need" the proposed services; and that in the midst of the presentation of applicant's case the board improperly imposed a 300-hour time limit on testimony adduced by applicant. Applicant reiterates its objections to certain rulings made at the hearing by the joint board and argues that the joint board's interpretation of the evidence as reflected in its statement of facts is incorrect and is "slanted" in protestants' favor; that its conclusions and recommendations based thereon are erroneous; and that the application should be granted. In their replies [3] protestants argue that there is ample

[3] Six sets of replies were filed by (1) Mercury Freight Lines, Inc., (2) Roadway Express, Inc., (3) Alabama Highway Express, Inc., (4) Baggett Transportation Company, (5) Campbell Sixty-Six Express, Inc., Georgia-Florida-Alabama Transportation Company, Inc., and United Freight Terminal, Inc., and (6) the rail protestants and Dixie Highway Express, Inc., Hoover Motor Express Company, Bowman Transportation, Inc., Deaton Truck Lines, Inc., Holloway Motor Express, Central Motor Express, Inc., Jack Cole Company, T.I.M.E., Incor-

motor carrier service available to the shippers from existing carriers; that new services between Atlanta and Birmingham and Dallas-Fort Worth and Houston have only recently been inaugurated and should be tried by the supporting shippers before additional authority is granted; and that the board's recommendations are correct and should be affirmed.

The evidence adduced, the board's recommendation, the exceptions, and the replies have been carefully considered. As seen, applicant complains of substantial bias on the part of the board, claiming that the board's rulings on the evidence and its statements of fact set out in its report have favored the opposing carriers unduly. Our review of the record fails to indicate that this is so. Although in requiring shipper witnesses to support their testimony concerning adverse experience in the use of existing carriers by reference to shipping documents, the joint board required a degree of specificity and corroboration which the Commission does not usually exact from shipper witnesses, this ruling promoted an orderly development of an extremely lengthy record. Applicant had ample opportunity to advise its supporting witnesses to bring corroborating documents to the hearing, and it took advantage of that opportunity by presenting witnesses who amply supported their testimony with shipping documents. The main effect of this ruling was to foster a more concise and useful record. With respect to the board's exclusion of testimony as to whether particular shippers "need" the proposed service, it is a common practice for witnesses to be asked and to give

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porated, Georgia Highway Express, Inc., B. C. Truck Lines, Inc., Atlanta New Orleans Motor Freight Company, White Truck Lines, Inc., Dance Freight Lines, Inc., Transcon Lines, Herrin Transportation Company, and Western Truck Lines, Ltd.

their opinion as to whether a proposed service is needed. However, such testimony adds little or nothing to the record, and in a strict sense such a question involves a matter of law which is the ultimate question for the Commission to decide in an application for motor common carrier authority. We believe that it is a matter within the proper discretion of the joint board to determine if it desires to receive the benefit of a witness' opinion as to whether a proposed service is "needed."

Our review of the record indicates that in curbing the time allotted applicant for completion of its case-in-chief, the joint board acted within the mandate of rule 1.76 of the Commission's General Rules of Practice which imposes upon the hearing officer (in this case the joint board) the duty to limit the number of witnesses whose testimony may be merely cumulative and that applicant has failed to show this ruling to be prejudicial error. We consider that the board's rulings at the hearing on all substantial issues were correct and that the statements of fact in its report are comprehensive and objective. We find that the board's statements of fact are correct in all material respects, and, except as modified herein, we adopt them as our own by reference. The facts are restated here solely to the extent necessary to an understanding and disposition of the issues.

Applicant operates 89 tractors, 154 trailers, and 83 pickup trucks. Of these, 140 trailers are leased from the parent company. Institution of the operations here would require up to 20 tractors and 40 trailers in addition to pickup and delivery equipment and would involve the expenditure of up to $600,000. The joint board concluded that applicant is not financially fit to conduct the proposed operations. This conclusion was based on the fact that applicant had conducted its

operations at a loss in recent years and owes its parent company approximately $516,000. Applicant's balance sheet as of September 30, 1960, shows total assets of approximately $1,489,792, and current assets of $839,504, including $416,718 cash. Its current liabilities, excluding the debt owed to the parent company, were $503,311. It is clear that, aside from the debt owed to its parent corporation, applicant is in a fairly strong financial position and certainly financially capable of conducting the proposed operations. In the circumstances we conclude that applicant is fit and able, financially and otherwise, to conduct the proposed service.

Applicant proposes to institute operations over the routes sought through 23 motor vehicle operating schedules. These schedules would serve points both on the routes sought here and on applicant's existing routes and would join at Dallas and Fort Worth with schedules operated by applicant's parent company to provide transcontinental service. They would range from sleeper runs between points on the routes sought here and Dallas-Fort Worth to peddle runs in rural areas served by the proposed routes. Overnight service with first morning delivery would be provided between points on the proposed routes in Georgia, Alabama, and Mississippi. Second morning service would be provided between these points and points on applicant's present routes as distant as New Orleans and Shreveport, La., Dallas-Fort Worth and Memphis, and third morning service with respect to Alexandria, La., and all other points on applicant's present system and points in the parent company's system including Houston, San Antonio, and El Paso, Tex., and fourth morning service to points west of El Paso. Applicant would establish terminals at important points on the routes sought here.

In many instances applicant's proposed schedules would enable faster and more consistent service than is available from existing motor common carriers. It intends to provide single-line service between points on the proposed routes and, *inter alia*, points on its system intermediate to Jackson and Fort Worth where single-line service is not available from protestants. It also hopes to render an improved transportation service consistent with the demands of the rapidly growing part of the industrial South and Southwest herein considered. It is anticipated that this same industrial growth would enable protestants to maintain their present volume of traffic despite some diversion to applicant.

As stated above, the application is supported by 311 shippers. The shipper support of the application relates primarily to service between points on the proposed new routes, on the one hand, and, on the other, points presently served by applicant and its parent company. However, important support of the application is also based upon a desire for service solely between points on the proposed routes. In general, the shippers desire applicant's proposed operating schedules and are dissatisfied with existing services due to slow transit time on most shipments and the heavy reliance they must place upon joint-line service. At the time of the opening of the hearings herein Roadway Express, Inc., and Mercury Freight Lines, Inc., had just inaugurated newly authorized regular-route services between Atlanta and Birmingham, on the one hand, and Dallas-Fort Worth and Houston on the other. During the 2-or 3-month period when applicant was presenting its case, Roadway increased the traffic handled by it under this new authority to more than one-half million pounds a week. Mercury experienced a similar increase to almost 2

million pounds a week. Comparatively few of the shipper witnesses appearing in support of the application had any experience in the use of these new services. One voiced a reasonable complaint which concerned service received from Mercury.

Protestants' services are many and diverse. Roadway and Mercury provide essentially closed-door service between Alabama and Georgia points served by them and Dallas-Fort Worth and Houston. These two carriers are *not* authorized to provide service at intermediate points except that Mercury may serve Beaumont, Tex., as an intermediate point on its Houston route and may provide service at Selma, Ala., as an additional connecting point with its routes in Alabama and Florida. Both Roadway and Mercury have separate "direct" routes between Birmingham on the one hand, and, on the other, Dallas and Houston, whereas applicant must serve Houston by interline with its parent company at Dallas. Roadway has an extensive system of regular routes radiating from Dallas and from Birmingham and Atlanta and operates over most of the routes which applicant seeks here. However, its pertinent authority between Birmingham and Dallas-Fort Worth is restricted against service at Birmingham. Mercury claims second-day delivery between Birmingham and Dallas-Fort Worth and Houston, whereas applicant claims that it will be able to provide second morning delivery between Birmingham and Dallas-Fort Worth and third morning between Birmingham and Houston.

Some of the remaining protestants have operating authorities paralleling significant parts of applicant's present and proposed routes. Campbell Sixty-Six Express, Inc., for example, operates between New Orleans, Memphis, and Tulsa. It operates between Jackson and Birmingham over the same routes sought

here. West Bros., Inc., operates between Birmingham and Montgomery and the Jackson and New Orleans gateways over the same routes as these sought by applicant, except operations to and from Jackson are not as direct as would be applicant's. Atlanta-New Orleans Motor Freight Co. operates over the same routes between Atlanta and Montgomery as that proposed here and serves the New Orleans gateway without the necessity of proceeding through Jackson. Dixie Highway Express, Inc., has regular-route authority almost completely duplicating that sought here. It serves both the Jackson and New Orleans gateways; but it has no operating authority west of these points.

Other motor carrier protestants serve parts of the considered routes through the Memphis, New Orleans, Atlanta, or other gateways and provide a considerable amount of single-line service which would be duplicated by applicant's proposal, in addition to joint-line service. As a group, protestant motor carriers have been expanding their equipment and facilities and have been improving their services. However, a large percentage of shipments moving between points in the considered territories still require three or four interchanges en route. None of the protestants can provide the extensive single-line service proposed by applicant between points on the routes applied for here and points intermediate to Jackson and Dallas-Fort Worth. Nor, with the exception of service to and from Houston, have protestants been shown to provide the expeditious joint-line service which applicant would provide in conjunction with its parent company to points beyond Dallas-Fort Worth.

We consider that the joint board in recommending denial of the application failed to give full weight to the unusually heavy and impressive shipper sup-

port in this record for needed improvements in both the single-line and joint-line services now available to the supporting shippers, especially in the light of the continuing growth in population and industrial output in the Southeast and Southwest. It was the existence of similar factors which moved the Commission in 1960 to grant authority into Dallas-Fort Worth and Houston to protestants Roadway and Mercury in *Roadway Exp., Inc., Ext.-Birmingham, Dallas, Houston*, 82 M.C.C. 689. Even with the grant of the Roadway and Mercury certificates and with the obvious efforts of other protestants to improve their abilities to serve the shipping public, it is clear that existing transportation services have failed to keep pace with the industrial growth of these territories. A large percentage of shipments must still move in three- or four-line hauls. Considering the extensive shipper support, the documented population growth, the continued industrial expansion of the Southeast and Southwest, and the dearth of single-line and relatively efficient joint-line services in those territories, we are convinced that there exists a need for improvement in service which protestants despite their undoubted efforts have been unable to provide. Other carriers serving these territories have continued to realize substantial increases in traffic, even subsequent to the grant of the Mercury and Roadway applications. Consequently, a grant of this application substantially as sought should not adversely affect protestants to a material extent. Moreover, the preservation of the *status quo* should not, in this instance, outweigh the overwhelming evidence of shipper need for improvements in the service now available. Consequently, we believe that the application should be granted to the extent set forth in the findings.

The application proposes a grant of authority to serve points within 5 miles of the proposed service routes and within 15 miles of the principal points thereon. Grants of regular-route authority by this Commission customarily confer only authority to serve intermediate points and termini on the routes involved. Although regular-route carriers have implied authority to serve points within 1 mile of the highways traversed and points within the commercial zones and terminal areas of the communities served, the Commission will not grant authority to serve more extensive radii about regular routes unless a specific need is established therefor. Here applicant has failed to provide substantial evidence of a requirement for regular-route authority broader than that ordinarily granted. Our findings will authorize service at the termini and intermediate points of the proposed service routes, but will not authorize service to points within the proposed radii. Applicant has also failed to establish a specific need for the transportation of dangerous explosives to and from points throughout the regular-route system sought here, and no authority will be granted therefor.

We find that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities except those of unusual value, livestock, classes A and B explosives, household goods, commodities in bulk, and those requiring special equipment, (1) between Jackson, Miss., and Atlanta, Ga.: From Jackson, Miss., over U. S. Highway 80 to the junction of U. S. Highway 11, thence over U. S. Highway 11 to Birmingham, Ala., thence over U. S. Highway 78 to Atlanta, Ga., and return over the same route, serving all intermediate points; (2) between Birmingham, Ala., and At-

lanta, Ga.: From Birmingham, Ala., over U. S. Highway 11 to Attalla, Ala., thence over U. S. Highway 411 to the junction of U. S. Highway 41, thence over U. S. Highway 41 to Atlanta, Ga., and return over the same route, serving all intermediate points; (3) between Jackson, Miss., and Atlanta, Ga.: From Jackson, Miss., over U.S. Highway 80 to Tuskegee, Ala., thence over U. S. Highway 29 to Atlanta, Ga., and return over the same route, serving all intermediate points; (4) between Tuskegee, Ala., and Atlanta, Ga.: From Tuskegee, Ala., over U. S. Highway 80 to Columbus, Ga., thence over Alternate U. S. Highway 27 and Georgia Highway 85 to Manchester, Ga., thence over Georgia Highway 85E to Woodbury, Ga., thence over Georgia Highway 85 to Atlanta, Ga., and return over the same route, serving all intermediate points; (5) between Opelika, Ala., and Columbus, Ga.: From Opelika, Ala., over U. S. Highway 280 to Columbus, Ga., and return over the same route serving all intermediate points; (6) between Birmingham, Ala., and Montgomery, Ala.: From Birmingham, Ala., over U. S. Highway 31 to Montgomery, Ala., and return over the same route, serving no intermediate points, as an alternate route for operating convenience only; and (7) between Birmingham, Ala., and Columbus, Ga.: From Birmingham, Ala., over U. S. Highway 280 to Columbus, Ga., and return over the same route, serving no intermediate points, as an alternate route for operating convenience only; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that a certificate authorizing such operations should be granted, and that the application in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the act and with our rules and regulations thereunder, within the time specified in the order entered concurrently herein, an appropriate certificate will be issued.

An appropriate order will be entered.

COMMISSIONER BUSH dissenting:

I would affirm the joint board's denial of the application. I am not convinced that a need has been shown for the proposed service, especially in view of the recently instituted operations of Roadway and Mercury between Atlanta and Birmingham on the one hand, and Dallas, Fort Worth, and Houston, on the other.

Appendix A

AUTHORITY SOUGHT

Operations in interstate or foreign commerce as a common carrier by motor vehicle over regular routes transporting classes A and B explosives, and general commodities except commodities of unusual value, livestock, household goods, commodities in bulk, and those requiring special equipment, over the following described routes, serving all intermediate points and certain off-route points.

Regular routes

Between Jackson, Miss., and Atlanta, Ga.: From Jackson, Miss., over U. S. Highway 80 to the junction of U. S. Highway 11, thence over U. S. Highway 11 to Birmingham, Ala., thence over U. S. Highway 78 to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highway and all off-route points within 15 miles of Meridian, Miss., Tuscaloosa, Birmingham, and Anniston, Ala., and Atlanta, Ga.

Between Birmingham, Ala., and Atlanta, Ga.: From Birmingham, Ala., over U.S. Highway 11 to Attalla, Ala., thence over U.S. Highway 411 to junction of U.S. Highway 41, thence over U.S. Highway 41 to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highways and all off-route points within 15 miles of Birmingham and Gadsden, Ala., and Atlanta, Ga.

Between Jackson, Miss., and Atlanta Ga.: From Jackson, Miss., over U.S. Highway 80 to Tuskegee, Ala., thence over U.S. Highway 29, to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above-specified highways and all off-route points within 15 miles of Meridian, Miss., Selma and Montgomery, Ala., and Atlanta, Ga.

Between Tuskegee, Ala., and Atlanta, Ga.: From Tuskegee, Ala., over U.S. Highway 80 to Columbus, Ga., thence over Alternate U.S. Highway 27 and Georgia Highway 85 to Manchester, Ga., thence over Georgia Highway 85E to Woodbury, Ga., thence over Georgia Highway 85 to Atlanta, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above-specified highways and all off-route points within 15 miles of Columbus and Atlanta, Ga.

Between Opelika, Ala., and Columbus, Ga.: From Opelika, Ala., over U.S. Highway 280 to Columbus, Ga., and return over the same route, serving all intermediate points and all off-route points within 5 miles of the indicated portions of the above specified highway and all off-route points within 15 miles of Columbus, Ga.

Also, applicant seeks authority to operate over the following alternate routes for operating convenience only.

Alternate routes

Between Birmingham, Ala., and Montgomery, Ala.: From Birmingham, Ala., over U.S. Highway 31 to Montgomery, Ala., and return over the same route.

Between Birmingham, Ala., and Columbus, Ga.: From Birmingham, Ala., over U.S. Highway 280 to Columbus, Ga., and return over the same route.

Appendix B

PROTESTANTS

Alabama Highway Express, Inc., Atlanta-New Orleans Motor Freight Company, Baggett Transportation Co., B.C. Truck Lines, Campbell Sixty-Six Express, Inc., Central Motor Express, Inc., Jack Cole Company, Couch Motor Lines, Inc., Dance Freight Lines, Inc., Deaton Truck Lines, Inc., Dixie Highway Express, Inc., East Texas Motor Freight Lines, Inc., Floyd & Beasley Transfer Co., Inc., Georgia-Florida-Alabama Transportation Company, Georgia Highway Express, Inc., Gillette Motor Transport, Inc., Herrin Transportation Company, Holloway Motor Express, Inc., Hoover Motor Express Company, Red Ball Motor Freight, Inc., Roadway Express, Inc., T.I.M.E., Incorporated, Transcon Lines, United Motor Freight Terminal, Incorporated, West Bros., Inc., Western Truck Lines, Ltd., White Truck Lines, Inc., Atchison, Topeka & Santa Fe Railroad, Illinois Central Railway, Southern Pacific Company, Southern Railway System, St. Louis-Southwestern Railway Company, Texas & New Orleans Railroad Company, and Texas & Pacific Railway.

INTERVENERS IN OPPOSITION

Mercury Freight Lines, Inc.
Southern Conference of Teamsters.

ORDER

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D.C., on the 1st day of July A.D. 1964

No. MC–1968 (Sub-No. 73)

BRASWELL FREIGHT LINES, INC., EXTENSION—ATLANTA

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby, denied.

And it is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act within 90 days after the date of service hereof, or within such additional time as may be authorized by the Commission, the grant of authority made in said report shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, division 1.

[SEAL] HAROLD D. MCCOY,
Secretary.

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No. 707

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

BRASWELL MOTOR FREIGHT LINES, INC.,
Appellant

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL, *Appellees*

On Appeal From the United States District Court for the
Southern District of Mississippi

Jurisdictional Statement

PHILLIPS & PETERS
1819 Guaranty National Bank Bldg.
Jackson, Mississippi
CHRISTOPHER & BAILEY
T. S. CHRISTOPHER
2412 Continental Life Bldg.
Fort Worth, Texas 76102
Attorneys for Appellant
Braswell Motor Freight Lines, Inc.

Fort Worth Brief Printing Co., 610 S. Jennings Street Phone ED 2-4070

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

BRASWELL MOTOR FREIGHT LINES, INC.,
Appellant

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL, *Appellees*

On Appeal From the United States District Court for the Southern District of Mississippi

Jurisdictional Statement

Braswell Motor Freight Lines, Inc. intervening defendant below, Appellant here, adopts as its own the Jurisdictional Statement filed by the United States of America and Interstate Commerce Commission, Appellants, such adoption being in all of its parts, including *questions presented, statement* which follows, and *conclusion.*

APPELLANT BRASWELL MOTOR FREIGHT LINES, INC., INTEREST

Braswell Motor Freight Lines, Inc., perfected its appeal to this Court.

Appellant has operated as a motor common carrier of general commodities since early May of 1935. The application out of which this judicial review of the decision of Appellant Commission arose was filed with

said Commission on April 28, 1960. Hearings were begun before a Joint Board in December of 1960. This hearing lasted for more than fourteen weeks. Your Appellant (as applicant) was supported by 293 witnesses representing more than 300 businesses. 100 M.C.C. 482 (489). The Joint Board decision was adverse to your Appellant. Division 1 of the Interstate Commerce Commission, an appellate division, reversed. 95 M.C.C. 457. Protesting carriers, Appellees here, filed petitions for reconsideration which were denied. This litigation ensued.

The Interstate Commerce Commission record before Appellate Division 1, upon which Division 1 acted, approximated 10,000 pages of oral evidence and some 750 exhibits. See that record which is now before your Honorable Court. The Statutory Court reversed and remanded. 242 Fed.Supp. 1016. The full Commission reconsidered. In its Report and Order, 100 M.C.C. 482-604, the Commission, on reconsideration, considered every facet measurable in terms of proof of convenience and necessity under applicable statutory criteria. In the voluminous record referred to, and the Court may take a look for verification, every facet had been carefully explored in detail, every complaint of the protestants (Appellees) and the trial court's criticisms weighed. Only then did the full Commission, in the exercise of its expertise, affirm its appellate division and authorize issuance of a certificate of convenience and necessity to your Appellant.

A motion to enforce the prior judgment was filed, and the trial court granted said motion. See Appen-

dices A through G inclusive of the United States and Interstate Commerce Commission Jurisdictional Statement.

The trial court's second opinion and judgment utterly and completely misapplied statutory standards and also went far afield in the exercise of the functions of a reviewing court and undertook to prescribe a rule of conduct for observance by the Interstate Commerce Commission, in application proceedings such as this, far beyond the power of the court to do.

This Appellant, Braswell Motor Freight Lines, Inc., is vitally affected. It has a highly valuable permissive right at stake.

CONCLUSION

The decision of the trial court is clearly in conflict with statutory standards and prior decision of this Court and should be summarily reversed. This Appellant relies on the statutes and the decisions cited by the United States and the Interstate Commerce Commission.

Respectfully submitted,

PHILLIPS & PETERS
1819 Guaranty National Bank Bldg.
Jackson, Mississippi

CHRISTOPHER & BAILEY
T. S. CHRISTOPHER
2412 Continental Life Bldg.
Fort Worth, Texas 76102
Attorneys for Appellant,
Braswell Motor Freight Lines, Inc.

PROOF OF SERVICE

I, T. S. Christopher, one of the attorneys for Braswell Motor Freight Lines, Inc., an Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4th day of October, 1967, I served copies of the foregoing jurisdictional Statement on the several parties to this action as follows:

1. On the United States, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Robert E. Hauberg, United States Attorney, Jackson, Mississippi; to the Solicitor General of the United States, Department of Justice, Washington, D. C.; to Honorable Donald F. Turner, Assistant Attorney General, Department of Justice, Washington, D. C.; and to Honorable John H. D. Wigger, Antitrust Division, Department of Justice, Washington, D. C.

2. On the Interstate Commerce Commission, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Honorable Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington, D. C.; to Hon. Leonard S. Goodman, Assistant General Counsel, Interstate Commerce Commission, Washington, D. C.; and to Honorable Betty Jo Christian, Attorney, Interstate Commerce Commission, Washington, D. C.

3. On the Appellees herein, by mailing copies thereof, in duly addressed envelopes, with air mail postage

prepaid, to Phineas Stevens, Esq., Butler, Snow, O'Mara, Stevens & Cannada, 700 Petroleum Building, Jackson, Mississippi 39201; to R. J. Reynolds, Jr., Esq. and R. J. Reynolds III, Esq., Reynolds and Reynolds, 403 Healey Building, Atlanta, Georgia 30303; to James W. Wrape, Esq. and Robert E. Joyner, Esq., Wrape & Hernley, 2111 Sterick Building, Memphis, Tennessee 38103; to Guy H. Postell, Esq., Monty T. Schumacher, Esq. and Frank Hall, Esq., 1375 Peachtree Street, N.E., Atlanta, Georgia 30309; to Bates Block, Esq. and Allen Post, Esq., Hansell, Post, Brandon & Dorsey, 600 First National Bank Building, Atlanta, Georgia 30303; to Wentworth Griffin, Esq., Reeder, Griffin & Dysart, 1221 Baltimore Avenue, Kansas City, Missouri 64015; to Frank M. Garrison, Esq., P. O. Box 1120, Lubbock, Texas 77008; to W. D. Benson, Jr., Esq., 9th Floor, Citizens Tower, Citizens National Bank Building, Lubbock, Texas 77001; to Maurice F. Bishop, Esq. and John P. Carlton, Esq., Bishop & Carlton, 327 Frank Nelson Building, Birmingham, Alabama 35203; to Dudley W. Conner, Esq., Conner Building, Hattiesburg, Mississippi 39401; and to James W. Nisbet, Esq. and Ed White, Esq., 280 Union Station Building, Chicago, Illinois 60606; to James L. Given, Esq. and James J. Williams, Esq., 1025 Connecticut Avenue, N.W., Washington, D. C. 20036; to William O. Turney, Esq. and Anthony C. Vance, Esq., Turney, Major, Markham & Sherfy, 2001 Massachusetts Avenue, N.W., Washington, D. C. 20036; and to Drew L. Carraway, Esq. and

John S. Fessenden, Esq., Rice, Carpenter & Carraway,
618 Perpetual Building, Washington, D. C. 20004.

T. S. Christopher
Attorney
2412 Continental Life Bldg.
Fort Worth, Texas 76102

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 694, 707

UNITED STATES, ET AL.

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL.

Memorandum of Dixie Highway Express, Inc., and Jack Cole Company in Response to Jurisdictional Statements

---

ROBERT E. SHORT
2625 Territorial Road
St. Paul, Minn.
Attorney for
Dixie Highway Express, Inc.,
and Jack Cole Company

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

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OCTOBER TERM, 1967

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DIXIE HIGHWAY EXPRESS, INC., ET AL.

Memorandum of Dixie Highway Express, Inc., and Jack Cole Company in Response to Jurisdictional Statements

---

Dixie Highway Express, Inc., and Jack Cole Company deem it advisable to confine their participation in this proceeding to the filing of this memorandum in response to the jurisdictional statements filed herein.

This is a direct appeal from the final judgment of a three-judge court setting aside an order of the In-

terstate Commerce Commission approving the application of Braswell Motor Freight Lines, Inc., to extend its motor carrier operations. Dixie Highway Express, Inc., and Jack Cole Company, together with other motor carriers, were protestants before the Commission and plaintiffs in the court below.

Dixie Highway Express, Inc., and Jack Cole Company are now in extreme financial distress. Their current liabilities exceed their current assets by over $1,800,000, and default has been made in obligations to the United States and other creditors amounting to over $2,596,000. As a result of this situation and subsequent to the lower court's decision, the stockholders have sold all of the capital stock of said companies to Robert E. Short, who has received temporary authority from the Interstate Commerce Commission, under section 210(b) of the Interstate Commerce Act [49 U.S.C. § 310(b)], to operate the properties temporarily, pending determination of an application under section 5(2) of the Act [49 U.S.C. § 5(2)]. Under this temporary authority, the vendee has assumed temporary control and operation of the companies and, in consonance with the purpose of the authorization by the Commission for temporary control and operation, is endeavoring to preserve the properties and restore their financial health.

In addition, Dixie Highway Express, Inc., and Jack Cole Company believe that the court below erred to the extent that its *per curiam* opinion states:

> "The invariable rule of the Commission is and has been for a long time that no certificate affecting the area of another carrier will be issued until that other carrier has been furnished an opportunity either to improve or correct his service to

such route or decide whether he wishes to or can furnish the added service sought by the applicant carrier."

Accordingly, neither Dixie Highway Express, Inc., nor Jack Cole Company desires to participate further in this proceeding.

Respectfully submitted,

ROBERT E. SHORT
Attorney for
Dixie Highway Express, Inc.,
and Jack Cole Company

Proof of Service.

I, Robert E. Short, attorney for the Dixie Highway Express, Inc. and Jack Cole Company, two of the appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 27th day of October, 1967, I served copies of the foregoing Memorandum In Response To Jurisdictional Statements on the several parties to this action, as follows:

1. On the United States, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Robert E. Hauberg, United States Attorney, Jackson, Mississippi 39202; and with first-class postage prepaid, to Honorable Ralph S. Spritzer, the Acting Solicitor General, Department of Justice, Washington, D. C. 20530, to Honorable Donald F. Turner, Assistant Attorney General, Department of Justice, Washington, D. C. 20530, and to John H. D. Wigger, Esq., Antitrust Division, Department of Justice, Washington, D. C. 20530.

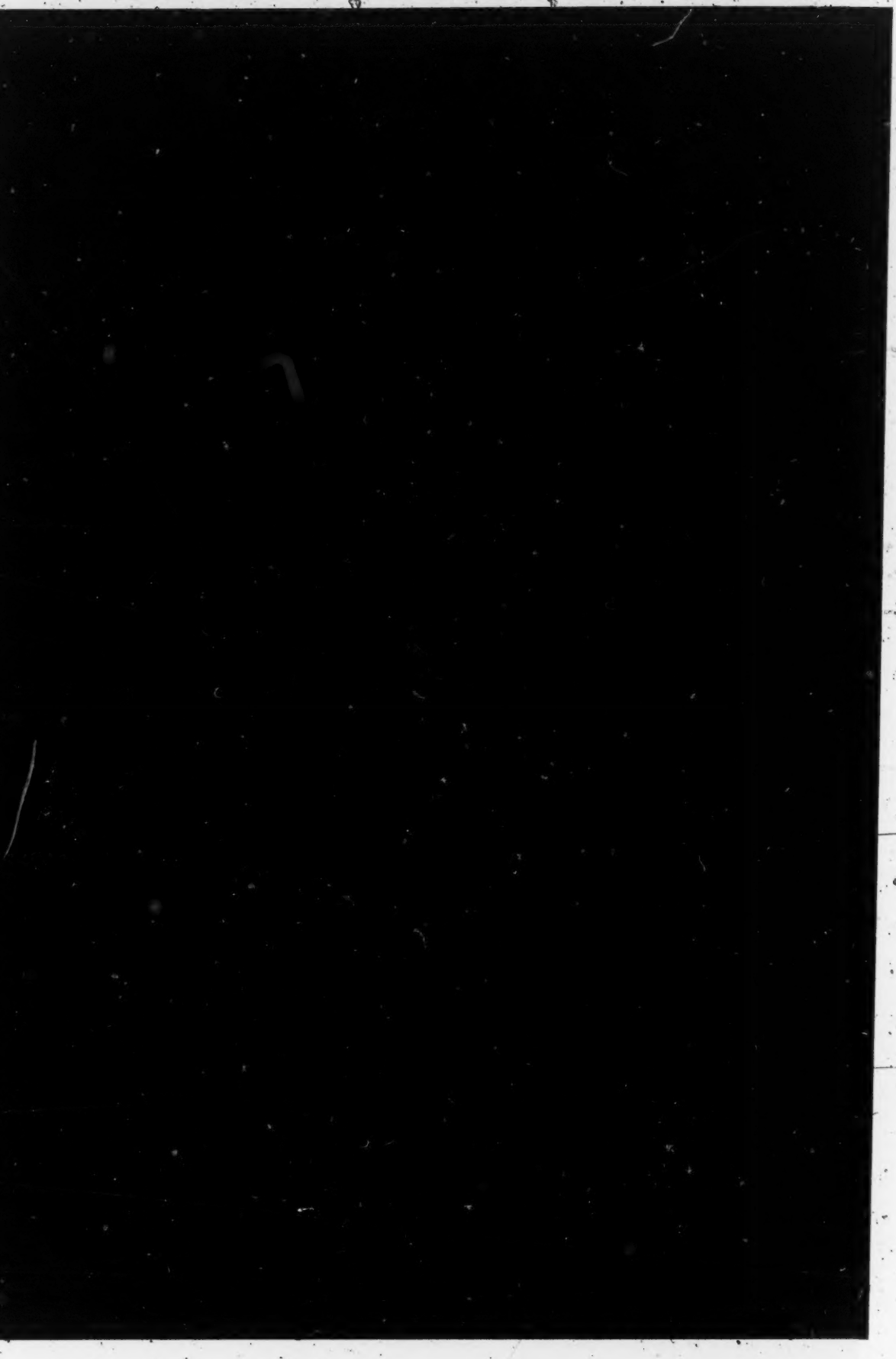
2. On the Interstate Commerce Commission, by mailing copies thereof, in duly addressed envelopes, with first-class postage prepaid, to Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington, D. C. 20423, to Fritz R. Kahn, Assistant General Counsel, Interstate Commerce Commission, Washington, D. C. 20423, to Leonard S. Goodman, Assistant General Counsel, Interstate Commerce Commission, Washington, D. C. 20423, and to Betty Jo Christian, Attorney, Interstate Commerce Commission, Washington, D. C. 20423.

3. On Appellant Braswell Motor Freight Lines, Inc., by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Rubel L. Phillips, Esq., Overstreet, Keykendall, Perry & Phillips, 829 Deposit Guaranty Bank Building, Jackson, Mississippi 39201, to Bob Fleming, Esq., P. O. Box 1966, Fort Worth, Texas 76101; and to M. Ward Bailey, Esq. and T. S. Christopher, Esq., Christopher & Bailey, 2412 Continental Life Building, Fort Worth, Texas 76102.

4. On the plaintiffs herein, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Phineas Stevens, Esq., Butler, Snow, O'Mara, Stevens & Cannada, 700 Petroleum Building, Jackson, Mississippi 39201; to R. J. Reynolds, Jr., Esq., and R. J. Reynolds III, Esq., Reynolds and Reynolds, 403 Healey Building, Atlanta, Georgia 30303; to James W. Wrape, Esq. and Robert E. Joyner, Esq., Wrape & Hernley, 2111 Sterick Building, Memphis, Tennessee 38103; to Guy H. Postell, Esq., Monty T. Schumacher, Esq. and Frank Hall, Esq., 1375 Peachtree Street, N. E., Atlanta, Georgia 30309; to Bates Block, Esq. and Allen Post, Esq., Hansell, Post, Brandon & Dorsey, 600 First National Bank Building, Atlanta, Georgia 30303; to Wentworth Griffin, Esq., Reeder, Griffin, Dysart & Taylor, 1221 Baltimore Avenue, Kansas City, Missouri 64015; to Frank M. Garrison, Esq., P.O. Box 1120, Lubbock, Texas 77008; to W. D. Benson, Jr., Esq., 9th Floor, Citizens Tower, Citizens National Bank Building, Lubbock, Texas 77001; to Maurice F. Bishop, Esq. and John P. Carlton, Esq., Bishop & Carlton, 327 Frank Nelson Building, Birmingham, Alabama 35203; to Dudley W. Conner, Esq., Conner Building, Hattiesburg, Mississippi 39401; and to James W. Nisbet, Esq. and Ed White, Esq., 280 Union Station Building, Chicago, Illinois 60606; and with first-class postage prepaid to James J. Williams, Esq., 1025 Connecticut Avenue, N.W., Washington, D. C. 20036; to William O. Turney, Esq. and Anthony C. Vance, Esq., Turney, Major & Sage, 2001 Massachusetts Avenue, N. W., Washington, D. C. 20036, and to Drew L. Carraway, Esq. and John S. Fessenden, Esq., Rice, Carpenter & Carraway, 618 Perpetual Building, Washington, D. C. 20004.

This 27th day of October 1967.

ROBERT E. SHORT
Attorney for
Dixie Highway Express, Inc.,
and Jack Cole Company



INDEX

	Page
Motion to Dismiss	1
No Appealable Question Presented	2
Statement of The Case	2
Argument	4
Conclusion	8
Appendix A	1a
Appendix B	2a
Appendix C	4a
Appendix D	5a

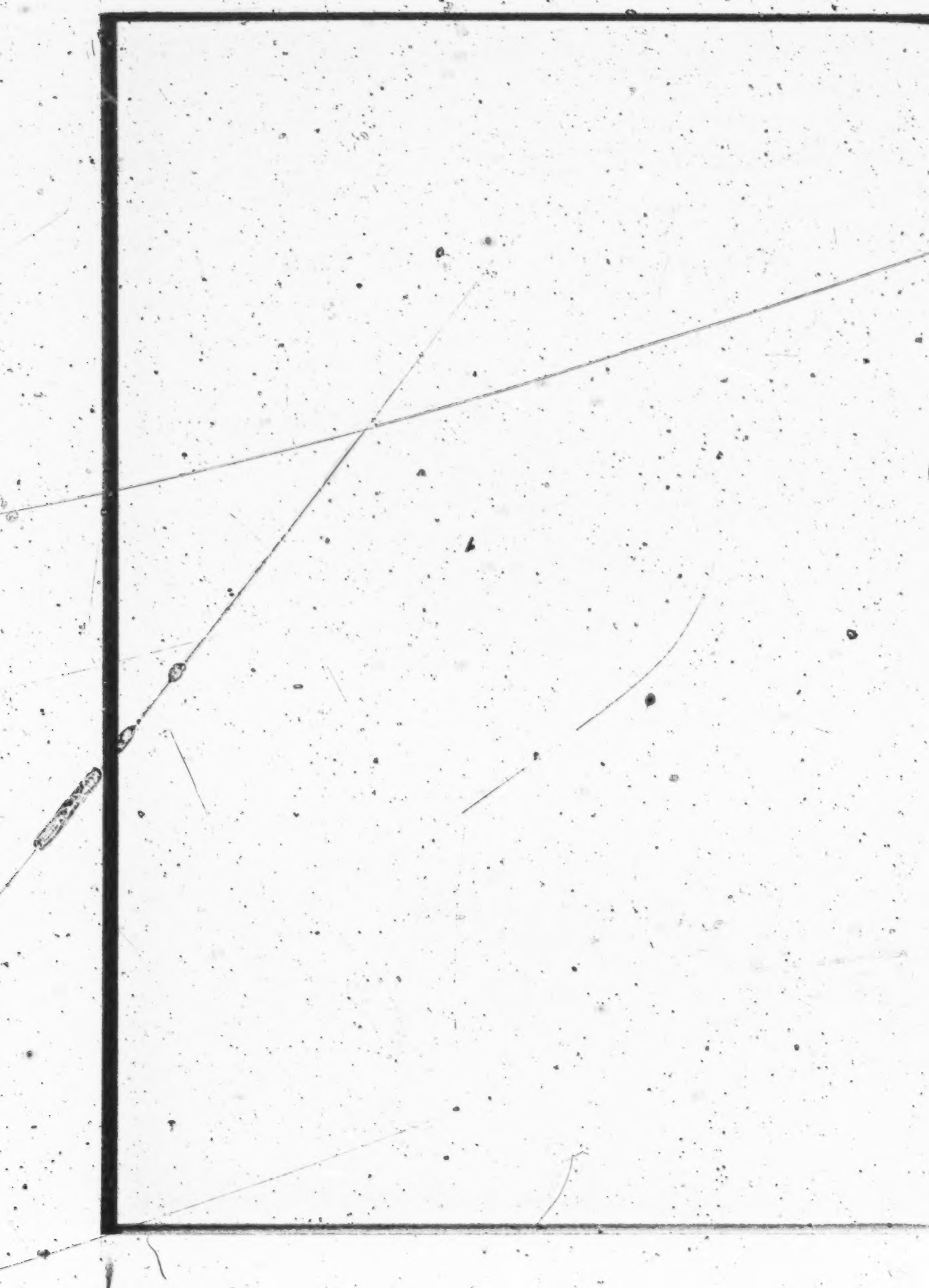
CITATIONS

CASES:

Federal Trade Commission v. Colgate-Palmolive Co., 380 U.S. 374, 378-379 (1965)	4
Point Transfer, Inc., Extension—Pa. and Ohio Origins, 105 M.C.C. 634	7

STATUTES:

Interstate Commerce Act, Section 207	2
28 U.S.C. 210(b)	2, 4



IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 694

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL., *Appellees*.

No. 707

BRASWELL MOTOR FREIGHT LINES, INC., *Appellant*,

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL., *Appellees*.

On Appeal From the United States District Court for the Southern District of Mississippi

---

MOTION TO DISMISS

Pursuant to Rule 16 of the Rules of this Court (adopted June 12, 1967, effective October 2, 1967), appellees move that this Court dismiss these appeals on the ground that they are not within the jurisdiction of

this Court because not taken within the time allowed. The names of the parties to this motion to dismiss are shown in Appendix A hereto.

NO APPEALABLE QUESTION PRESENTED

Appellants urge that these appeals only present a question as to the standard to be applied by the Interstate Commerce Commission in determining whether or not a Certificate of Public Convenience and Necessity should be issued pursuant to Section 207 of the Interstate Commerce Act. But such question cannot properly be presented, inasmuch as the only question resolved by the Court below was whether or not the Commission had complied with the original mandate of the Court. None of the appellants raise the only issue resolved by the Court below in its decision on plaintiffs' motion to enforce the original judgment, the appeals being nothing more than an attempt to assail that original judgment. The appeals are clearly foreclosed[1] and should be dismissed.

STATEMENT OF THE CASE

A clear statement of the sequence of events that brings the case to its present posture will demonstrate that these appeals must be dismissed, the time for taking them having expired some two years ago. Such a statement is not to be found in the jurisdictional statements of the appellants, appellant Braswell having simply adopted the jurisdictional statement of appellants Interstate Commerce Commission and United States of America, and those appellants having presented the matter as a routine appeal from a decision of a three judge court reviewing a decision of the Com-

[1] 28 U.S.C. 2101(b) and Rule 11 of the Rules of this Court.

mission on the merits. In point of fact, the decision below in sustaining the motion to enforce, did no more than restate the original judgment.

On July 19, 1965, the district court entered its final judgment (J.S. 229a-230a) setting aside the report and order of the Interstate Commerce Commission which granted to Braswell Motor Freight Lines, Inc., a Certificate of Public Convenience and Necessity. The grounds stated by the district court included *inter alia* inadequate findings on the part of the Commission and lack of substantial record evidence to support the Commission's conclusion. No appeal from that decision was taken by either the Interstate Commerce Commission, the United States, or Braswell Motor Freight Lines, Inc. Furthermore, no party sought rehearing before the district court, although Braswell did request the court to modify its judgment to remove the finding of lack of substantial evidence to support the Commission's conclusion. That request was denied by the court. (See Appendices B and C hereto).

Following the remand of the district court in July of 1965 the Commission reopened the Braswell application for reconsideration on the same record and subsequently, without having taken any additional evidence, issued its decision of January 17, 1966, (J.S. 8a-217a) again granting the Braswell application. Plaintiffs in the court below, which included the appellees here, did not bring an action seeking judicial review of the second Commission decision on its merits. Rather, they filed a motion requesting the district court to enforce its judgment of July 19, 1965, on the ground that the action of the Commission was inconsistent therewith. (See Appendix D hereto).. Defendants below, appellants here, resisted that motion and argued

that the Commission's action was not inconsistent with the court's mandate. The court unanimously held that the Commission's action was inconsistent, granted plaintiffs' motion to enforce, enjoined the Commission from granting the Braswell application on the basis of the Commission's January 1966 decision, and specifically reserved full jurisdiction to enforce its decree. (J.S. 6a-7a).

ARGUMENT

The judgment of the district court entered in July 1965 was clearly a final judgment in that it resolved the litigation. Indeed, the Commission so treated it for it purported to act pursuant to the court's remand. However, the Commission's second report and order is nothing more than a restatement of its prior determination, and the per curiam opinion issued by the district court along with its decree granting the motion to enforce merely points out the inconsistencies of the Commission's action with the court's final judgment and remand. The Commission did no more by its second decision than to restate the position taken in its first decision and the lower court did no more than reiterate its former objections. Consequently the sixty days allowed by law[2] for appealing the final decision of the three judge court ran from the entry of the court's judgment in July of 1965. *Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 378-379 (1965).

The Commission, in its first report, reversed the decision of the joint board and held that the application should be granted. It concluded (J.S. 243a) existing services were inadequate. It rationalized there has

[2] 28 U.S.C. 2101(b).

been growth in the Southeast and Southwest, asserted that appellees had failed to keep pace despite the services of appellees Roadway and Mercury which were so new shippers had not had sufficient time even to *test* them, and alleged that a large percentage of shipments require three or four interchanges en route.

In its decision (J.S. 218a-228a) the district court did not, as urged by appellants, (J.S. 4), merely enjoin the Commission on the ground of inadequate findings. Nor did it remand merely for more specificity.[3] This is made clear by the court's ultimate conclusion (J.S. 228a).

> "It is the view of this Court without prolonging this opinion that the report and order of the Interstate Commerce Commission thereon is not supported by the record *and* does not measure up to indicated standards and that such report and order should be vacated and annulled. * * *" (Emphasis ours)

The conclusion respecting lack of evidentiary support is firmly based upon findings and subsidiary conclusions, some of which follow:

> "* * * The Commission further stated: 'As a group, protestant motor carriers have been expanding their equipment and facilities and have been improving their services. However, a large percentage of shipments moving between points in the *considered territories* still require three of (sic) four interchanges en route.' *There does not appear to be any substantial support in this record for that statement,* and counsel for defendants at the bar were unable to point out any to this Court

[3] Underlying appellants' theory of the case is their assertion (J.S. 4) that the only requirement made by the court was that the Commission restate findings with "more than ordinary specificity".

in the record." (J.S. 222a) (Second emphasis added)

* * * *

"* * * Such findings and conclusions by the Interstate Commerce Commission are lacking in this case and it is apparent to this Court that its conclusions are *without substantial support in this record;* otherwise, it would have been more clearly and specifically stated in its record. * * *" (J.S. 225a) (Emphasis supplied)

* * * *

"In this case *there appears no substantial evidence* to support the conclusion that any actual transportation need or necessity existed for the granting of this franchise. * * *" (J.S. 226a) (Emphasis added)

* * * *

"This report of the Commission stands alone *without record support* of any idea that there were *any inadequacies in existing service.* * * *" (J.S. 227a) (Emphasis supplied)

The district court further held that there is no evidence that existing carriers were afforded an opportunity to rectify any claimed deficiencies in their services, contrary to the Commission's long-standing policy reaffirmed just a few days prior to oral argument. The court said (J.S. 227a):

"There is no evidence in this record that existing carriers were afforded *an opportunity to rectify any such deficiencies in their services.* Yet on April 23, 1965, the Interstate Commerce Commission said: 'We have *repeatedly stated* that existing carriers normally should be accorded an opportunity to transport all of the traffic they can handle in an adequate and efficient manner without the added competition of a new operation.' * * *" (Emphasis added)

The court concluded that refusal to give appellees' operations, especially the brand-new services of Roadway and Mercury, the same consideration consistently given others under similar circumstances was arbitrary "for to adopt different standards for similar situations is to act arbitrarily". That is one of the indicated standards the order was found not to measure up to.

The court further held (J.S. 227a), "One of the basic ingredients in the determination of public necessity is the inadequacy of existing service." In the face of the lower court's unappealed finding that there was no record support of any idea of inadequacies in existing service, and in the face of the court's refusal to modify that finding, the Commission, on the same record, by its second report and order again granted the certificate exclusively on the ground of inadequacy. This is conceded. (J.S. 5-10).

And, although the jurisdictional statement endeavors to find in the language of the court below in enforcing its decision an important question of broad public policy, the Commission clearly regards the decision as valid, for on October 3, 1967, long after it gave notice of appeal herein, the Commission relied heavily upon the court's decision to support its denial of 32 applications seeking to transport iron and steel articles between points in eastern Ohio and western Pennsylvania and points in numerous states. In that case, *Point Transfer, Inc., Extension—Pa. and Ohio Origins,* 105 M.C.C. 634, the Commission stated on page 659:

> "We are convinced that the applications cannot be granted. The Commission has stated repeatedly that existing carriers normally should be afforded an opportunity to transport all the traffic they can handle in an adequate and efficient manner with-

> out added competition of a new operation. One of the basic elements in the determination of public need is the inadequacy of existing service. *Dixie Highway Express, Inc.* v. *United States,* 242 F. Supp. 1016 (1965) * * *."

The district court, in enforcing its judgment, held (J.S. 2a) that the Commission's restatement of its reasons with more than ordinary specificity rectified "only part of the infirmity pointed out". In the same clear and unambiguous words, employed in its decision, the court reiterated, *inter alia* (J.S. 227a; 2a) that a basic ingredient in the determination of public convenience and necessity is inadequacy, that the Commission has uniformly held that existing carriers should be accorded an opportunity to transport all the traffic they can handle in an adequate and efficient manner without added competition, that there is no evidence that existing carriers were afforded an opportunity "to rectify" any claimed deficiencies in their services, and that it was arbitrary for the Commission to apply different standards to these appellees under similar circumstances than uniformly applied to others.

CONCLUSION

The court did no more in enforcing its judgment than to restate what it had decided the first time. Indeed, the very question said to be here presented (J.S. 3) is based upon a conclusion in the second opinion which reiterated the conclusion of the first in identical words. If appellants believed the court erred, they had every opportunity and should have appealed the original judgment. They cannot appeal the second. Where, as here, a court sets aside an agency order and the agency merely restates its position and the court merely

reiterates former objections, time for appeal runs from the court's first judgment.

In *Colgate-Palmolive, supra*, this Court said at page 378:

> "* * * The Commission may not merely restate its former position in a new order and then apply for certiorari when the court of appeals reiterates its previous objection. As was said in *Federal Power Comm'n* v. *Idaho Power Co.*, 344 U.S. 17,20f, 'If the court did no more by the second judgment than to restate what it had decided by the first one . . . the 90 days would start to run from the first judgment.' To the same effect see *Federal Trade Comm'n* v. *Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211. * * *"

Clearly, the time for taking these appeals has long since expired and they should be dismissed for lack of jurisdiction. Appellees respectfully so move.

Respectfully submitted,

JOHN S. FESSENDEN
Rice, Carpenter & Carraway
618 Perpetual Building
Washington, D. C. 20004

BATES BLOCK
Hansell, Post, Brandon & Dorsey
600 First National Bank Bldg.
Atlanta, Georgia 30303

ROBERT E. JOYNER
Wrape & Hernly
2111 Sterick Building
Memphis, Tennessee 38103

WENTWORTH GRIFFIN
Reeder, Griffin & Dysart
1221 Baltimore Avenue
Kansas City, Missouri 64015

R. J. REYNOLDS, III
Reynolds and Reynolds
403 Healey Building
Atlanta, Georgia 30303

CLARENCE W. VANDEGRIFT
Room 305
1012 - 14th Street, N.W.
Washington, D. C. 20004

WILLAM O. TURNEY
Turney, Major, Markham & Sherfy
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

ED WHITE
280 Union Station Building
Chicago, Illinois 60606

W. D. BENSON, JR.
900 Citizens Tower
Lubbock, Texas 77001

Attorneys for Appellees

APPENDIX A

Names of Appellees

Baggett Transportation Co.

Georgia Highway Express, Inc.

Mercury Freight Lines, Inc.

Roadway Express, Inc.

T.I.M.E., Incorporated

Transcon Lines

The Atchison, Topeka & Santa Fe Railroad Company

Chicago, Rock Island and Pacific Railroad Company

Fort Worth and Denver Railroad Company

Illinois Central Railroad

Missouri Pacific Railroad Company

St. Louis-San Francisco Railway Company

The Texas and Pacific Railway Company

Acme Fast Freight, Inc.

National Carloading Corporation

Republic Carloading & Distribution Company

Universal Carloading & Distributing Co., Inc.

Western Carloading Company, Inc.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action Number 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., *Plaintiffs*

v.

UNITED STATES, ET AL., *Defendants*

Braswell Motor Freight Lines, Inc., intervening defendant, moves the Court to amend and supplement its finding of fact and conclusions of law set forth in the Opinion or Memorandum of Decision heretofore filed, in the following particulars:

1. Amend the last paragraph, page 10 of the Opinion or Memorandum of Decision, to read as follows:

> "It is the view of this Court without prolonging this opinion that the report and order of the Interstate Commerce Commission does not measure up to indicated standards and that such report and order should be vacated and annulled. In this proceeding we have limited our review to the report and order of the Commission which we have before us and such examination of the record as was necessary to test the validity of this particular report and order. This Court has not undertaken to search the record or to weigh the evidence to determine whether the Commission should, on reconsideration, grant or deny the application. The Interstate Commerce Commission should be enjoined from issuing a permit or franchise to the applicant for the reasons stated; and this proceeding should be remanded to the Interstate Commerce Commission for its reexamination and study and further action thereon

not inconsistent with the opinion of the Court herein. The temporary injunction heretofore issued in this case will be made permanent. The bond for the temporary injunction will be discharged. A judgment accordingly may be presented for entry."

The grounds of this motion are stated in the attached Memorandum.

M. WARD BAILEY
2412 Continental Life Building
Ft. Worth, Texas

RUBEL L. PHILLIPS
829 Deposit Guaranty Bank Building
Jackson, Mississippi

BOB W. FLEMMING
3301 Braswell Drive
Ft. Worth, Texas

Attorneys for Intervening Defendant, Braswell Motor Freight Lines, Inc.

Of Counsel:

CHRISTOPHER & BAILEY
2412 Continental Life Building
Ft. Worth, Texas

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action Number 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., *Plaintiffs*

v.

UNITED STATES, ET AL., *Defendants*

Order Overruling Motion of Braswell Motor Freight Lines, Inc.

The motion of Braswell Motor Freight Lines, Inc. to amend the findings and conclusions contained in the opinion of the Court in this case being heard and considered and the Court being of the opinion that said motion is without merit;

IT IS ORDERED AND ADJUDGED by the Court that said motion be and it is hereby overruled.

ORDERED, this August 16, A.D., 1965.

JOHN MINOR WISDOM
United States Circuit Judge

GRIFFIN B. BELL
United States Circuit Judge

HARRIED COX
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1273

DIXIE HIGHWAY EXPRESS, INC.; ALABAMA HIGHWAY EXPRESS, INC.; ACME FAST FREIGHT, INCORPORATED; BAGGETT TRANSPORTATION COMPANY; BOWMAN TRANSPORTATION, INC.; GEORGIA HIGHWAY EXPRESS, INC.; JACK COLE COMPANY; ROADWAY EXPRESS, INC.; T.I.M.E. FREIGHT, INC.; TRANSCON LINES; UNIVERSAL CARLOADING & DISTRIBUTING CO., INC.; WESTERN CARLOADING CO., INC.; WEST BROTHERS, INC.; MERCURY FREIGHT LINES, INC.; GEORGIA-FLORIDA-ALABAMA TRANSPORTATION COMPANY, INC.; CAMPBELL SIXTY-SIX EXPRESS, INC.; UNITED MOTOR FREIGHT TERMINAL, INC.; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; FORT WORTH AND DENVER RAILWAY COMPANY; ILLINOIS CENTRAL RAILROAD; MISSOURI PACIFIC RAILROAD COMPANY; ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and THE TEXAS AND PACIFIC RAILWAY COMPANY; NATIONAL CARLOADING CORPORATION, *Plaintiffs*

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, *Defendants*

and

BRASWELL MOTOR FREIGHT LINES, INC.,
Intervening Defendant

Motion to Enforce Judgment

Plaintiffs, pursuant to Section 1651 of the Judicial Code, [28 U.S.C. § 1651] and the rules of this Court, respectfully move the Court, constituted as a three-judge court pursuant to 28 U.S.C. Sections 2284 and 2325 (consisting

of Circuit Judges John Minor Wisdom and Griffin B. Bell and District Judge William Harold Cox) to enforce the Judgment entered by this Court on July 16, 1965 (Appendix I), which Judgment was entered pursuant to the Court's Opinion entered June 23, 1965 (Appendix II).

Specifically, Plaintiffs ask the Court to enter an order holding that the report and order of the Interstate Commerce Commission, served February 18, 1966 (Appendix III), in MC-1968 Sub. No. 73, *Braswell Freight Lines, Inc., Extension—Atlanta* re-numbered and re-entitled MC-111383 Sub No. 16, *Braswell Motor Freight Lines, Inc., Extension—Atlanta*), 100 M.C.C. 482, is not in compliance with the prior Opinion and Judgment of this Court, and is therefore a nullity.

As of the time of the preparation of this Motion, Plaintiffs are advised that the Interstate Commerce Commission has not issued a Certificate of Public Convenience and Necessity to the Intervening Defendant, Braswell Motor Freight Lines, Inc., pursuant to the decision of the Interstate Commerce Commission (Appendix III). However, should such a Certificate be issued before the Court passes on this Motion, Plaintiffs further ask the Court to direct the Interstate Commerce Commission to rescind the issuance of such Certificate.

In support of this Motion, Plaintiffs would respectfully show the Court:

1.

On July 19, 1965, this Court entered a final judgment and decree (Appendix I) in conformity with the Court's opinion entered June 23, 1965 (Appendix II), setting aside as unlawful the report and order of the Interstate Commerce Commission dated July 1, 1964 (95 M.C.C. 457), and the order dated December 28, 1964, insofar as it denied petitions for reconsideration in Docket No. MC-1968, Sub No. 73 (renumbered Docket No. MC-111383 Sub No. 16).

2.

On July 19, 1965 (service date July 26, 1965), the Interstate Commerce Commission entered an order setting the orders of July 1 and December 28, 1964, and ordering that the proceeding be reopened for further consideration by the Commission (Appendix IV).

3.

No appeal was taken from this Court's opinion or judgment;

4.

Intervening Defendant, Braswell Motor Freight Lines, Inc., filed a motion to amend and supplement the Court's findings of fact and conclusions, requesting, among other things, that the last paragraph on page 10 of this Court's Opinion be amended.

Ths paragraph of the Court's Opinion reads as follows:

> "It is the view of this Court without prolonging this opinion that the report and order of the Interstate Commerce Commission thereon is not supported by the record and does not measure up to indicated standards, and that such report and order should be vacated and annulled. The Interstate Commerce Commission should be enjoined from issuing a permit or franchise to the applicant for the reasons stated; and this proceeding should be remanded to the Interstate Commerce Commission for its re-examination and study and further action thereon not inconsistent with the opinion of the Court herein. The temporary injunction heretofore issued in this case will be made permanent. The bond for the temporary injunction will be discharged. A judgment accordingly may be presented for entry."

The effect of the Intervening Defendant's proposed amendment would have been to strike the Court's holding

that the report and order of the Interstate Commerce Commission was not supported by the record and to substitute in lieu thereof the following:

> "In this proceeding, we have limited our review to the report and order of the Commission which we have before us and such examination of the record as was necessary to test the validity of this particular report and order. This Court has not undertaken to search the record or to weigh the evidence to determine whether the Commission should, on reconsideration, grant or deny the application.";

5.

This Court overruled the aforesaid motion of Intervening Defendant by an order dated August 16, 1965 (Appendix V);

6.

No other motion to modify the Court's opinion or the Court's final judgment was made;

7.

Without conducting a further hearing, without taking any additional evidence, and without receiving any other pleadings from the parties, the Interstate Commerce Commission, on February 18, 1966, published, with two Commissioners dissenting, its decision (Appendix III). The effect of this decision is only to reiterate, contumaciously, that which the Commission had previously found and held in the orders which this Court set aside;

8.

The evidence before the Interstate Commerce Commission was the same. The reasons advanced by the Commission are the same. The conclusions reached by the Commission are the same, except that in the most recent decision the grant of alternate route authority is deleted. Therefore, the decision of the Interstate Commerce Com-

mission of February 18, 1966, is patently not in compliance with this Court's judgment and is in no wise "further action thereon not inconsistent with the Opinion of this Court herein".

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that:

(1) This Court hold the report and order of the Interstate Commerce Commission in Braswell Motor Freight Lines, Inc., Extension—Atlanta, MC-111383 (Sub-No. 16), served February 18, 1966, to be a nullity and direct the Commission to act in Docket No. MC-111383 (Sub-No. 16) in accordance with the judgment of this Court entered July 16, 1965, and in accordance with the Court's opinion entered June 23, 1965;

(2) If, prior to the time of the hearing on this Motion, the Interstate Commerce Commission shall have issued a Certificate of Public Convenience and Necessity to the Intervening Defendant, Braswell Motor Freight Lines, Inc., in Docket No. MC-111383 (Sub-No. 16), the Court make an order requiring the Interstate Commerce Commission to rescind said Certificate;

(3) That the Plaintiffs have such other and further relief as they may be entitled to in the premises.

Respectfully submitted,

PHINEAS STEVENS
700 Petroleum Building
Jackson, Mississippi
Attorney for Plaintiffs

Of Counsel:

BUTLER, SNOW, O'MARA,
STEVENS & CANNADA
700 Petroleum Building
Jackson, Mississippi

REYNOLDS AND REYNOLDS
403 Healey Building
Atlanta, Georgia, 30303

R. J. REYNOLDS, JR.
R. J. REYNOLDS, III
403 Healey Building
Atlanta, Georgia, 30303
Attorneys for
DIXIE HIGHWAY EXPRESS, INC. and
BOWMAN TRANSPORTATION, INC.

WRAPE AND HERNLY
2111 Sterick Building
Memphis, Tennessee 38103
and
711 Fourteenth Street, N.W.
Washington, D.C., 20005

JAMES W. WRAPE
ROBERT E. JOYNER
2111 Sterick Building
Memphis, Tennessee 38103
Attorneys for
ALABAMA HIGHWAY EXPRESS, INC. and
BAGGETT TRANSPORTATION COMPANY

GUY H. POSTELL
MONTY T. SCHUMACHER
FRANK HALL
1375 Peachtree Street, N.E.
Atlanta, Georgia, 30308
Attorneys for
JACK COLE COMPANY

HANSELL, POST, BRANDON & DORSEY
600 First National Bank Bldg.
Atlanta, Georgia, 30303

BATES BLOCK
ALLEN POST
600 First National Bank Building
Atlanta, Georgia, 30303
Attorneys for
GEORGIA HIGHWAY EXPRESS, INC.

REEDER, GRIFFIN & DYSART
1221 Baltimore Avenue
Kansas City, Missouri, 64015

WENTWORTH GRIFFIN
1221 Baltimore Avenue
Kansas City, Missouri, 64015
Attorney for
TRANSCON LINES

FRANK M. GARRISON
P. O. Box 1120
Lubbock, Texas
and
W. D. BENSON, JR.
9th Floor, Citizens Tower
Citizens National Bank
Building
Lubbock, Texas
Attorneys for
T.I.M.E. FREIGHT, INC.

JAMES L. GIVAN
JAMES J. WILLIAMS
1025 Connecticut Avenue,
N. W.
Washington, D. C.
Attorneys for
WESTERN CARLOADING CO., INC.
UNIVERSAL CARLOADING & DISTRIBUTING CO., INC.
NATIONAL CARLOADING CORPORATION, and
ACME FAST FREIGHT, INC.

BISHOP AND CARLTON
327 Frank Nelson Bldg.
Birmingham, Alabama

MAURICE F. BISHOP
JOHN P. CARLTON
327 Frank Nelson Building
Birmingham, Alabama
Attorneys for
GEORGIA-FLORIDA-ALABAMA TRANSPORTATION COMPANY, INC.
CAMPBELL SIXTY-SIX EXPRESS, INC., and
UNITED MOTOR FREIGHT TERMINAL, INC.

DUDLEY W. CONNER
Conner Building
Hattiesburg, Mississippi
Attorney for
WEST BROTHERS, INC.

JAMES W. NISBET
ED WHITE
280 Union Station Building
Chicago, Illinois, 60606
Attorneys for
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY;
FORT WORTH AND DENVER RAILWAY;
ILLINOIS CENTRAL RAILROAD;
MISSOURI PACIFIC RAILROAD COMPANY;
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY; and
THE TEXAS AND PACIFIC RAILWAY COMPANY

TURNEY, MAJOR, MARKHAM & SHERFY
2001 Massachusetts Ave., N.W.
Washington, D. C., 20036

WILLIAM O. TURNEY
ANTHONY C. VANCE
2001 Massachusetts Avenue, N.W.
Washington, D. C., 20036
Attorneys for
ROADWAY EXPRESS, INC.

RICE, CARPENTER AND CARRAWAY
618 Perpetual Building
Washington, D. C., 20004

DREW L. CARRAWAY,
JOHN S. FESSENDEN
618 Perpetual Building
Washington, D. C., 20004
Attorneys for
MERCURY FREIGHT LINES, INC.

Certificate of Service

I certify that I have this day served a copy of the foregoing motion upon counsel of record, as listed below, by mailing copies thereof to each such party via first class mail, posted prepaid.

Dated at Jackson, Mississippi, this day of March, 1966.

PHINEAS STEVENS

Hon. Nicholas deB. Katzenbach
Attorney General
Department of Justice
Washington, D. C., 20530

Hon. Robert W. Ginnane
General Counsel
Interstate Commerce Commission
Washington, D. C., 20423

Hon. Robert E. Hauberg
United States Attorney
Post Office Box 2091
Jackson, Mississippi

Hon. Rubel L. Phillips
829 Deposit Guaranty Bank Building
Jackson, Mississippi

Hon. William H. Orrick, Jr.
Assistant Attorney General
Department of Justice
Washington, D. C., 20530

Hon. John H. D. Wigger, Attorney
Department of Justice
Washington, D. C., 20530

Hon. H. Neil Garson, Secretary
Interstate Commerce Commission
Washington, D. C., 20423

Hon. Bob W. Fleming
3301 Braswell Drive
Fort Worth, Texas

Hon. M. Ward Bailey
2412 Continental Life Building
Fort Worth, Texas

APPENDIX I

Final Judgment and Decree of U. S. District Court for the Southern District of Mississippi, dated July 16, 1965, printed as Appendix E to Jurisdictional Statement of appellants Interstate Commerce Commission and United States.

APPENDIX II

Decision of U. S. District Court for the Southern District of Mississippi, dated June 23, 1965, printed as Appendix D to Jurisdictional Statement of Interstate Commerce Commission and United States.

APPENDIX III

Decision of Interstate Commerce Commission dated January 17, 1966, in *Braswell Motor Freight Lines, Extension—Atlanta,* printed as Appendix C to Jurisdictional Statement of appellants Interstate Commerce Commission and United States.

APPENDIX IV

Service Date
July 26, 1965

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 19th day of July, A.D. 1965.

No. MC-1968 (Sub-No. 73)

BRASWELL FREIGHT LINES, INC., EXTENSION—ATLANTA
(El Paso, Tex.)

Renumbered and reentitled

No. MC-111383 (Sub-No. 16)

BRASWELL MOTOR FREIGHT LINES, INC.,
EXTENSION—ATLANTA

(El Paso, Tex.)

It appearing, That on June 23, 1965, the United States District Court for the Southern District of Mississippi in

Civil Action No. 1273 (E)(M), *Dixie Highway Express* v. *United States,* vacated and annulled the report and orders of the Commission, Division 1, of July 1 and December 28, 1964, in the above-entitled proceeding and remanded said proceeding to the Commission for reconsideration in accordance with its opinion, and for good cause:

It is ordered, That the orders of the Commission, Division 1, entered July 1, 1964, and December 28, 1964, in the above-entitled proceeding, be, and they are hereby, vacated and set aside, and

It is further ordered, That the above-entitled proceeding be, and it is hereby, reopened for further consideration by the Commission.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)

APPENDIX V

Order of United States District Court for the Southern District of Mississippi dated October 18, 1965, printed as Appendix C to appellees' Motion to Dismiss.

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NOV 29 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 694

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*

vs.

DIXIE HIGHWAY EXPRESS, INC., ET AL, *Appellees*

No. 707

BRASWELL MOTOR FREIGHT LINES, INC., *Appellant*

vs.

DIXIE HIGHWAY EXPRESS, INC., ET AL, *Appellees*

On Appeal From the United States District Court for the Southern District of Mississippi

Appellant Braswell Motor Freight Lines, Inc., Reply to Appellees' Motion to Dismiss

PHILLIPS & PETERS
1819 Guaranty National Bank Bldg.
Jackson,, Mississippi 39200

CHRISTOPHER & BAILEY
T, S. CHRISTOPHER
2412 Continental Life Bldg.
Fort Worth, Texas 76102
Attorneys for Appellant
Braswell Motor Freight Lines, Inc.

Fort Worth Brief Printing Co., 610 S. Jennings Street Phone ED 2-4870

INDEX

Page

THE SHORT ANSWER 1

PRELIMINARY 3

THE TRUE BASIS OF FIRST DECISION AND THE REMAND 4

EFFECT OF THE REMAND 7

TIME FOR APPEAL RUNS FROM DATE OF COURT'S SECOND DECREE 11

THE APPEALABLE QUESTION 19

PROOF OF SERVICE 26

APPENDIX A 28

INDEX OF AUTHORITIES

Page

5 U.S.C. 1001, et seq. 23
5 U.S.C. 1007(b) 4, 6
5 U.S.C. 1009(e) 5
49 U.S.C. 301, et seq. 6
49 U.S.C. 304(a) 21
49 U.S.C. 305(a) 3
49 U.S.C. 305(g) 3
49 U.S.C. 307(a) 3, 10, 16, 18, 23

I.C.C. General Rules of Practice,
Rules 1.96 and 1.97, F.R.Vol. 31—Number 140 3

I.C.C. General Rules of Practice,
Rule 1.101. 3

American Trucking Association vs. United States,
326 U.S. 77 18

Davidson Transfer & Storage Co. vs. United States,
42 Fed.Supp. 215, affirmed 317 U.S. 587 18

Fairmount Aluminum Co. vs. C.I.R.,
222 Fed.2d 622, cert.den. 350 U.S. 838 6

Federal Communications Commission vs.
Pottsville Broadcasting Co.,
309 U.S. 134, 145 ..... 8, 23

Federal Power Commission vs. Idaho Power Co.,
344 U.S. 17, 20 2

Federal Power Commission vs. Marr, No. 693,
381 U.S. 392, 405, 406 5

Federal Trade Commission vs. Colgate-Palmolive Co.,
380 U.S. 374 ..... 2, 22, 23, 24

Federal Trade Commission vs.
Minneapolis-Honeywell Regulator Co.,
344 U.S. 206 ..... 2, 24

Florida vs. United States, 292 U.S. 1 9

Ford Motor Company vs.
National Labor Relations Board,
306 U.S. 364 9

INDEX OF AUTHORITIES (Continued)

Page

Interstate Commerce Commission vs.
J. T. Transport Co., 368 U.S. 81 5

Interstate Commerce Commission vs. Parker,
326 U.S. 60, 89 L.Ed 2051, 65 S.Ct. 1490 ..... 10, 18

Labor Board vs. Donnelly Garment Co.,
330 U.S. 219 24

Morand Bros. Beverage Co. vs. N.L.R.B.,
204 Fed.2d 529, cert.den. 346 U.S. 909 9

Niagara-Mohawk Power Co. vs.
Federal Power Commission,
202 Fed.2d 100, affirmed 347 U.S. 239 7

Regal Knitware Co. vs. N.L.R.B.,
324 U.S. 9 9

Riss & Co. vs. United States and Interstate
Commerce Commission, 341 U.S. 907 4

Securities and Exchange Commission vs.
Chenery Corp., 332 U.S. 194 8

Strickland Transportation Company,
77 M.C.C. 655 14

United States vs. Carolina Carrier Corp.,
315 U.S. 475 5

United States vs. Chicago M. St. P. & P. R.Co.,
294 U.S. 499 5

United Gas Improvement Company vs.
Continental Oil Co., No. 644,
381 U.S. 392 5

United States, et al vs. Detroit & Cleveland
Navigation Co., 326 U.S. 236 ..... 17, 21

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 694

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*

vs.

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No. 707

BRASWELL MOTOR FREIGHT LINES, INC., *Appellant*

vs.

DIXIE HIGHWAY EXPRESS, INC., ET AL, *Appellees*

On Appeal From the United States District Court for the Southern District of Mississippi

Appellant Braswell Motor Freight Lines, Inc., Reply to Appellees' Motion to Dismiss

Appellees' motion to dismiss is without merit.

The short answer is that appellees contend in their motion to dismiss that the decision and judgment of the court below is merely a restatement of its first decision of July 19, 1965. Appellees say, therefore, that time for appeal began to run from date of the July 1965 judgment.

This Court said in *Federal Trade Commission vs. Colgate-Palmolive Co.*, 380 U.S. 374, 378, that where an agency "merely restate(s) its former position in a new order" and the reviewing court "reiterates its previous objection" that the agency is then barred from appealing the second decision.

But that is not what happened here. Here the Commission properly and reasonably construed the first decision of the court below as being directed to the lack of adequacy and sufficient findings of the Commission's original report and order. Although the first judgment (July 19, 1965) of the court below vaguely referred to its theory of existing competitors being "afforded an opportunity to rectify" the deficiencies of their service, nonetheless the court below did not spell out its meaning. "(I)t was not until the second opinion that the court below clearly articulated" *Colgate-Palmolive*, supra, at page 384, its "afforded opportunity" or "second chance" theory.

"Therefore, at the least, the court's second opinion resolved a genuine ambiguity in the first, and the time (for appeal) dates from the second judgment." Ibid. Cf. *Federal Power Commission vs. Idaho Power Co.*, 344 U.S. 17, 20; *Federal Trade Commission vs. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211.

The foregoing is the complete answer to appellees' motion, but since we deign to answer we take a cue from the Chief Justice expressed in *Colgate-Palmolive*, supra, where he says that "The resolution of the issue . . . requires a detailed analysis of the var-

ious opinions, mandates and orders," etc., of the court below and of the Interstate Commerce Commission.

PRELIMINARY

This case grows out of a new certificate application filed by applicant under Section 207(a), Motor Carrier Act, *49 U.S.C. 307(a)*. The application was heard by a Joint Board, Section 205(a), *49 U.S.C. 305(a)*. The Joint Board denied the application. Appellant filed exceptions. *I.C.C. General Rules of Practice, Rules 1.96 and 1.97*, F.R. Vol. 31—Number 140. The Interstate Commerce Commission reversed the Joint Board and granted the application. Petitions for reconsideration were filed. *I.C.C. General Rules of Practice, Rule 1.101*. Ibid. Said petitions were denied.

Appellees then filed the suit to set aside the Interstate Commerce Commission final order in the United States District Court, Southern District of Mississippi. Motor Carrier Act, Section 205(g), *49 U.S.C. 305(g)*. The court below, a statutory court of three judges, set aside the Commission's order and "(R)emanded to the Interstate Commerce Commission *for its reexamination and study and further action thereon* not inconsistent with the opinion of the Court herein." (Emphasis supplied). 242 Fed Supp. 1016, J.S. at p. 230a. The Interstate Commerce Commission did exactly that. J.S. pp. 8a-217a, Appendix C.

Appellees then filed *motion to enforce* the prior judgment. The motion was granted. 268 Fed.Supp.

239. Opinion is shown in J.S. as Appendix A, pp. 1a-5a. The "final decree," J.S. Appendix B, pp. 6a-7a, clearly shows the basis therefor as follows:

> "(2) That the decision of the Commission, dated January 17, 1966, is erroneous *as a matter of law*, and such decision and consequent judgment in its Action Number MC-111383 (Sub Number 16) . . . and the certificate authorized and issued pursuant thereto to such carrier are cancelled and annulled as invalid and void."

Thus we reach the final chapter of all proceedings, both before the Interstate Commerce Commission and in the court below.

THE TRUE BASIS OF FIRST DECISION AND THE REMAND

The basis of the first decision of the court below, 242 Fed. Supp. 1016, was the Commission's failure to make "basic findings as to the inadequacy of the service presently being rendered," the Commission having "dealt with this record throughout its report in vague and nebulous terms" and "with the problem in its entirety in generalities without favoring us with any facts found in this record to support the conclusion which they reached;" that such "findings and conclusions were lacking in this case."

In such circumstances there was an inherent error of law, i.e., failure to comply with Section 8(b), *5 U.S.C. 1007(b)*, of the Administrative Procedure Act. *Riss & Co. vs. United States and Interstate Commerce Commission*, 341 U.S. 907. This required the court

below to vacate the first Commission order[1] and to remand for "reexamination and study and further action."

This is in reality all that the court below did by its first decision. That is all it could do because the authority of the court on review of an administrative order is very limited.[2] The limitations are expressed in Section 10(e) of the Administrative Procedure Act. *5 U.S.C. 1009(e).*

Looking at the Commission's first report and order in the light of its condemnation as found in the court's first decision, 242 Fed.Supp. 1016, it is pretty obvious that an appeal to your Honorable Supreme Court would have met with nothing except the fate of an affirmance, *per curiam.* Consequently we believe that appellants pursued the proper course, in view of the *remand* with instructions to reexamine and restudy and for further action not inconsistent with the court's opinion. *United Gas Improvement Company vs. Continental Oil Co.*, No. 644, and *Federal Power Commission vs. Marr*, No. 693, 381 U.S. 392, 405, 406.

The court's decree following its first opinion repeated the language "this proceeding should be remanded to the Interstate Commerce Commission for its reexamination and study and further action thereon," and enjoined the Commission "*from issuing a*

[1] *I.C.C. vs. J. T. Transport Co.*, 368 U.S. 81, 93; *United States vs. Carolina Carrier Corp.*, 315 U.S. 475, 489; *United States vs. Chicago, M., St. P. & P. R. Co.*, 294 U.S. 499.

[2] This principle is so firmly embedded that citations are deemed unnecessary.

certificate of public convenience and necessity to the applicant *based on (its prior) report and order.*"

If the injunction and remand meant anything other than just what it said, i.e., its prior *report and order*, the court could have easily, and probably would, have chosen the word "*record.*" Thus the Commission was clearly free to do just what it did do. It made a "re-examination and study" of the record and entered a very detailed report and order after consideration of every facet entering into a determination of the question of "convenience and necessity" within the prescribed criteria of the Motor Carrier Act, *49 U.S. C. 301, et seq.*, and of the National Transportation Policy. And it pointed its finger at the volume and page number of the *record* and the specific exhibit number. The rationale of the order was, and is, clearly apparent. There was also a most painstaking compliance with the requirements of Section 8(b) of the Administrative Procedure Act, *5 U.S.C. 1007(b).*

When the Commission's report and order, following the remand, 100 M.C.C. 482, went back to the court on motion for enforcement of the court's first decree, 242 Fed.Supp. 1016, there was no real question left for the court to determine except whether or not the Commission's report and order was "inconsistent" with the court's instructions.

The doctrine of *res judicata* and equitable or collateral estoppel does not apply to decisions of administrative agencies. *Fairmount Aluminum Co. vs. C.L.R.*, 222 Fed.2d 622, cert. den. 350 U.S. 838;

Niagara-Mohawk Power Co. vs. Federal Power Commission, 202 Fed.2d 100, affirmed 347 U.S. 239.

But appellees' motion in this Court takes on the appearance of a plea of *res judicata* for they say that the judgment "entered in July 1965 was clearly a final judgment in that it resolved the litigation." This is true only, however, to the extent of the matter adjudicated. In this respect we have shown very clearly, and the opinion, 242 Fed.Supp. 1016, clearly demonstrates, that the matter adjudicated was limited to a finding that the Commission's decision, 95 M.C.C. 457, was lacking in specific findings; that the Commission made "no basic findings;" that the Commission "dealt with this record throughout its report in vague and nebulous terms." The court referred to the Commission's said report and order in various similar expressions.

This is made perfectly clear by referring to a letter addressed to one of the attorneys for appellees here by the court dated July 16, 1965, attached hereto as *Appendix A*.

But that decision of the court did not dispose of the entire proceeding for it was "*remanded.*"

EFFECT OF THE REMAND

The remand, of course, left the application proceeding open for disposition by the Commission. For matters committed by the Congress to the exclusive determination by the agency must be left to the agency under the doctrine of primary jurisdiction.

The court did the only thing which it could do within the limits of its judicial review function.

The remand *did not "foreclose the administrative agency, after its error had been corrected, from enforcing the legislative policy committed to its charge." Federal Communications Commission vs. Pottsville Broadcasting Co.*, 309 U.S. 134, 145.

In the case at bar the Interstate Commerce Commission had by its report and order, 100 M.C.C. 482, following the remand, "corrected" the error which had been pointed out by the court, and proceeded in a detailed opinion which gave effect to "the legislative policy committed to its charge."

In *Pottsville Broadcasting Company's* case, supra, it is said:

> "On review the court may thus correct errors of law and on remand the Commission is bound to act upon the correction. *Federal Power Comm'n v. Pacific Co.*, 307 U.S. 156. But an administrative determination in which is embedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge. Cf. *Ford Motor Co. v. Labor Board*, 305 U.S. 364."

The Supreme Court further noted in *Securities and Exchange Commission vs. Chenery Corp.*, 332 U.S. 194, 200-201 (1947), in sustaining a decision of the SEC which, on remand, had reached the same decision for different reasons:

> "When the case was directed to be remanded

> to the Commission for such further proceedings as might be appropriate, it was with the thought that the Commission would give full effect to its duties in harmony with the views we had expressed . . . After the remand was made, therefore, the Commission was bound to deal with the problem afresh, performing the function delegated to it by Congress."

A comprehensive statement of the respective functions of court and agency is set out in *Ford Motor Company vs. National Labor Relations Board*, 305 U.S. 364, 374 (1939):

> "The 'remand' does not encroach upon administrative functions. It means simply that the case is returned to the administrative body in order that it may take further action in accordance with the applicable law. See Federal Radio Commn. v. Nelson Brothers Co., 289 U.S. 266, 278.
>
> "Such a remand does not dismiss or terminate the administrative proceeding. If findings are lacking which may properly be made upon the evidence already received, the court does not require the evidence to be reheard. (Citations omitted). If further evidence is necessary and available to supply the basis for findings on material points, that evidence may be taken (Citations omitted). Whatever findings or order may subsequently be made will be subject to challenge if not adequately supported or the Board has failed to act in accordance with the statutory requirements."[3]

[3] Cf. *Regal Knitware Co. vs. N.L.R.B.*, 324 U.S. 9; *Morand Bros. Beverage Co. vs. N.L.R.B.*, 204 Fed.2d 529, cert. den. 346 U.S. 909; *Florida vs. United States*, 292 U.S. 1.

The court below said that the Commission had the "right and duty *to review this record* and to make its own determination thereon," 242 Fed.Supp. at 1020. That is, we repeat, exactly what the Commission did. And in doing so it was exceedingly cautious to see to it that its report and order was consistent with the only reasonable construction of the court's opinion. It was the Commission's *right and duty*. Under the Congressional delegation of authority, which in many specific respects exceeds that of the normal judicial function, especially the "reviewing power," Congress delegated the *exclusive* power to the Commission to determine the question of public convenience and necessity under Section 207(a) of the Motor Carrier Act, *49 U.S.C. 307(a)*.

In *Interstate Commerce Commission vs. Parker*, 306 U.S. 60 at page 65, it is said:

> "The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. Cf. Powell v. United States, 300 US 276, 287, 81 L ed 643, 651, 57 S Ct 470. This, of course, gives administrative discretion to the Commission, cf. McLean Trucking Co. v. United States, 321 US 67, 87, 88, 88 L ed 544, 556, 557, 64 S Ct 370, to draw its conclusion from the infinite variety of circumstances which may occur in specific instances."

The foregoing analysis and consideration of authorities now brings us to a further consideration of whether appellees' motion to dismiss has any validity whatever.

As in the beginning of this reply to the motion, we assert that it is without merit.

We have pointed out the true basis for the court's first decision, i.e., lack of adequate, specific and intelligible findings—the "vague and nebulous" dealing with the record, etc.

TIME FOR APPEAL RUNS FROM DATE OF COURT'S SECOND DECREE

Date of judgment vacating the Commission's first report and order is July 19, 1965. Date of judgment of court below to enforce its first decree is May 15, 1967. The July 19, 1965, judgment remanded to the Commission for reexamination and study and further action not inconsistent with the court's opinion. Even the most casual examination of the Commission's resulting action, 100 M.C.C. 482, clearly and plainly shows that the Commission most scrupulously, and with exceeding care, observed the court's instructions.

The Commission clearly did not repeat the errors found by the court to inhere in the Commission's first report and order.

The court below not only recognizes this but admits it, for the court, 268 Fed.Supp. 239, says:

> "The Commission has made a detailed report with findings and conclusions upon which to reaffirm the prior determination as to the public convenience and necessity for the service requested with unimportant exceptions."

That should have been the end of it.

But from there the court went on, thus clearly showing the court's admission:

> "It is the considered judgment of this Court that such action of the Commission *rectifies* only part of the infirmity pointed out by the Court . . ." etc. "In criticising the order of the Commission . . ., this Court pointed out: There is no evidence in this record that existing carriers were afforded an opportunity to rectify any such deficiencies in their service." etc.

It was this holding which brought about the decree of enforcement of the court's first judgment.

It was this holding of the court below which projected the court into the realm of the legislative function and beyond its jurisdiction as a reviewing court. That judicial function is a very limited one. Authorities supra

In its first opinion the court expressed a belief that existing carriers should have this privilege upon a supposed requirement for "consistency of administrative rulings"—a second chance.

The court either did not understand, or refused to recognize, that the Commission in the use of the language, "We have repeatedly stated that existing carriers normally should be accorded an opportunity to transport all of the traffic they can handle *in an adequate and efficient manner* without the added competition of a new operation," was there considering one of the many facets which the Commission is required to consider in reaching a decision on the overall and ultimate issue of whether or not the public

convenience and necessity requires additional service —the criteria or standard prescribed by the Congress in the statute.

So in truth, fact and law the Commission did consider that criticism and at very great length. See 100 M.C.C. pp. 499-506, and Appendicies B, p. 510; D, pp. 514-516; E, PP. 517-518; and especially Appendix K, pp. 592-602, where the Commission considered each motor carrier separately and individually.

A consideration of the holding of the court below, and especially the criticism used by the court as a pretext for entering the enforcement decree, i.e., failure to *afford* existing carriers "an opportunity to rectify . . . deficiencies in their service," in relation to the Commission's last report and order makes the court below look pretty bad. Because in truth and fact existing carriers had that opportunity. Look at the facts.

Appellant Braswell Motor Freight Lines, Inc., filed its application on April 28, 1960; hearing began on November 28, 1960; applicant concluded its presentation on February 28, 1961; appellees here (the protestants) began presentation of their evidence on May 1, 1961, and concluded on June 1, 1961.

This timetable alone condemns the court's criticism, here under consideration, as utterly and completely unfounded. The appellees here, the protestants before the Commission, *actually had a full year's* (April 28, 1960, to May, 1961) "opportunity to rectify the . . . deficiencies in their service." They were faced with

"the added competition of a new operation" immediately upon the filing of the application. (Notice of filing of applications is published in the Federal Register). These appellees *had five months* after the hearing started before they began presentation of their opposition evidence.

One year is an awfully long time as a trial or test period—"affording opportunity"—to remedy the deficiencies of their service. Five months is a generous amount of time.

And it is obvious that the appellees tried to "rectify the deficiencies" of their services. See the Commission's treatment in Appendix K of its report and order —which shows the appellees' traffic studies and exhibits all covered periods of time *after* the hearings began. Such efforts are common. The Commission has taken notice of it before. *Strickland Transportation Company*, 77 M.C.C. 655. We quote:

> "There is nothing in this record to indicate that the improved service demanded by the public and offered by the respective applicants is in any manner inconsistent with sound operating policies or otherwise unreasonable in any respect. Both Herrin and TSC hold themselves out to provide next-morning or next-day service between the considered points and both have demonstrated their ability to perform such service when they choose to do so. They have further demonstrated, however, that they cannot be depended upon to provide the type of service of which they are capable, except when faced with an imminent threat of additional competition.
>
> "In our decision in "*Southern Exp., Inc., Com-*

mon Carrier Application, cited above, decided June 10, 1953, which involved issues substantially the same as those here presented, we stated:

"after the instant applications were filed, both Herrin and T.S.C. improved their services between Houston and New Orleans. Some of the shippers fear, however, that without added competition from one or more of the applicants the improved service will be discontinued. In our opinion, the record affords no reasonable basis for such a conclusion.

"Here, as in the prior proceeding, Herrin and TSC are shown to have materially improved their Houston-New Orleans services after the filing of the instant applications. Even with such improvement, however, Herrin provided next-day delivery on only 60 percent of the shipments transported between Houston and New Orleans in August 1955, and TSC provided next-day service on only 33 percent of the shipments handled between the same points in June and July of 1955. The 70-percent figure attained by Herrin in January of 1956 is more impressive, *but we are not convinced that it may be depended upon to continue service on that plane, particularly in view of the deterioration in service noted after the denial of the 1947 applications and the elimination of the competitive stimulus resulting therefrom.* TSC's record of only a little over 50 percent next-day service compiled in January and February 1956 is not impressive under any circumstances. We conclude that the existing service of Herrin and TSC between Houston and New Orleans is not reasonably adequate to meet the present and future requirements of the public for expeditious motor service; and that the granting of authority

for the institution of some additional service is justified." (emphasis supplied).

The foregoing quote clearly demonstrates that in cases such as this the final granting of an application, if based upon substantial evidence, which is admitted here, had best be left to the expertise of the agency ordained by Congress to make them.

But more importantly, a study of the Commission's last report and order clearly, completely and unalterably demonstrates the inexcusable error of the court in saying, after otherwise admitting the sufficiency of said report and order, that: "(S)uch action of the Commission rectifies *only part* of the infirmity pointed out by the court . . ."

The Commission's report and order, 100 M.C.C. 482, *literally* covered every inch of the court's criticisms and instructions.

However, even if said report and order had failed in the respect and in the sense that the court apparently intended, the "alleged opportunity," it would have been immaterial. For *if intended as an iron-clad instruction it was beyond the power* of the court because it impinged upon the legislative power of Congress, and also the limited legislative power which Congress delegated to the Commission to fill in the interstices of the Motor Carrier Act within the broad outlines of that Act.

Criticism of the court below was limited to the "*present*" but this disregards the language of the statute, *49 U.S.C. 307(a)*, which authorizes the Com-

mission to issue a certificate of convenience and necessity if the Commission finds "that the proposed service to the extent to be authorized by the certificate, is or will be required *by* the *present or future* public convenience and necessity." Section 307(a).

The court below, by its second decree, 268 Fed.Supp. 239, committed fundamental error.

This is clearly illustrated in *United States, et al vs. Detroit & Cleveland Navigation Co.*, 326 U.S. 236. We quote from page 241:

> "The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted. For the performance of that function the Commission has been entrusted with a wide range of discretionary authority. Interstate Commerce Commission v. Parker, 326 US 60, 89 L ed 2051, 65 S Ct 1490. Its function is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem an expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies. Its doubt that the public interest will be adequately served if resumption of service is left to existing carriers is entitled to the same respect as its expert judgment on other complicated transportation problems. See Chesapeake & O.R. Co. v. United States, 283 US 35, 42, 75 L ed 824; 829, 51 S Ct 337; Alton R. Co. v. United States, 315 US 15, 23, 86 L ed 586, 595, 62 S Ct 432. Forecasts as to the future are necessary to the decision. But neither uncertainties as to the future nor the inability or failure of existing carriers to show the sufficiency of their plans

> to meet future traffic demands need paralyze the Commission into inaction. It may be that the public interest requires that future shipping needs be assured rather than left uncertain. The Commission has the discretion so to decide. It went no further here."[4]

We have now clearly shown that the Commission fully, completely and literally complied with the mandate of the court below, as the instructions of said court are shown in its opinion and decree, 242 Fed. Supp. 1016, specifically including the criticism "that existing carriers were (not) afforded an opportunity to rectify any such deficiencies in their services."

Even so the latter criticism was not within the province of the court, that court having overlooked or having completely ignored the Congressional mandate to the Commission as spelled out in Section 307(a) of the Act, *49 U.S.C. 307(a)*. The mandate of the court below ran counter-clock-wise to that of the statute and of Congress.

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[4] Cf. *Interstate Commerce Commission vs. Parker*, 326 U.S. 60; *American Trucking Association vs. United States*, 326 U.S. 77; *Davidson Transfer & Storage Co. vs. United States*, 42 Fed.Supp. 215, affirmed 317 U.S. 587.

THE APPEALABEE QUESTION

We apologize for the length of the discussion leading up to the contention of appellees set out in their motion. May we please be pardoned for what we felt essential in this respect.

Appellees say there is no appealable question; that the only question before the court below "was whether or not the Commission had complied with the original mandate."

Well, we have shown, and the Commission's report and order, 100 M.C.C. 482, shows on its face, that the Commission made literal compliance. Then appellees say that the appeal to this Honorable Court is "nothing more than an attempt to assail that original judgment." Not so, not at all.

On this mere fiat of the appellees, they say that time for appeal began to run from the date of entry of the first judgment on July 19, 1965. And then they say that the "Commission did no more by its second decision than to restate the position taken in its first decision." But let us again point out that the court below *admits* the adequacy of the fact findings of the Commission, the rationale thereof and substantiality of the evidence.

Then appellees, continuing in the same sentence of the next above quote, say that "and the lower court did no more than reiterate its former objections."

Appellant humbly and most respectfully submits that the contention closely approaches the frivolous. It might be that we should not deign to have answered it.

The Commission fully complying with the court's mandate and leaving nothing within the jurisdiction of the court except to affirm the action of the Commission, the court below plunged off into Congressional functions and announced a new requirement of substantive law in addition, but contrary, to the provisions of Section 307(a) which is in conflict with the very language of and the intent and purpose of Congress in its entire plan of regulation of motor carriers —in fact, of all regulated carriers.

All of this is a far, very far, cry from the mere fiat of appellees, that the Commission merely repeated its errors and the court merely repeated its former objections.

Moreover, the court below also prescribed a procedural rule of conduct. That rule is, says the court, that the Commission must afford existing competing carriers "an opportunity to rectify any such deficiencies in their service."

In the light of the Congressional plan of regulation and of Section 307(a) in particular, when remembering Congress' use of the words "present *or future*," the lower court's prescribed rule taxes the imagination. What does it mean? When should existing competitive carriers be "afforded" such "opportunity"? If before the hearing, then in this case they had from April 1960 to December 1960, yea, in fact to May 1961. This we have already pointed out.

Or is it after the hearing of the applicant's evidence? If after, then for how long a time does this

unorthodox procedure continue, one month, or two, or a year?

In this case, at least, that "afforded" time was, according to the court below, *after* the hearing. But this simply will not do.

Such a court-prescribed procedural rule runs contrary to the authority which Congress delegated to the Commission as contained in Section 304(a), *49 U.S.C. 304(a)*, and Section 304(a)(6) in particular.

Again we ask, what is the court below going to do with the words "or future" of Section 307(a); and what is the court below going to do with the provisions of Section 307(b)?

The court below went far beyond its review function and announced *a rule of property* which is not within the purview of the Motor Carrier Act, the purpose of Congress, and never before acknowledged or asserted by any court. It is specifically denied in Section 307(b)

The right of the Commission to authorize new operations, even if service of existing carriers is *presently* adequate, has been confirmed by the courts based upon *future* transportation needs, as we have already shown. Under the language of the statute (Section 307(a)), "Forecasts as to the future are necessary to the decision. But neither uncertainties as to the future nor the inability or failure of existing carriers to show the sufficiency of their plans to meet future traffic demands *need paralyze the Commission into inaction.*" See *United States vs. Detroit & Cleveland Navigation Co.*, 326 U.S. at page 241, and footnote 4, supra.

The fact is that the court below undertook to deal with matters of which it had never dreamed; that its opinion and decree, 268 Fed.Supp. 239, opened a Pandora's box of uncertainties which, in substantial part, destroys the administrative process generally and the Congressional plan of regulating of carriers in particular. As to the Interstate Commerce Commission, it creates administrative chaos.

Consider for a moment, if the Court please, the effects of the trial court's ruling, if accepted, upon the work of the vast and varied administrative as well as judicial tribunals of the federal system and the equally numerous and diversified interests affected by their functioning; or, indeed upon the many and different types of administrative and judicial procedures which Congress has provided for dealing adjudicatively with such interests.

Appellees rely solely upon *Federal Trade Commission vs. Colgate-Palmolive Co.*, 380 U.S. 374, and what this Court said at page 378. The trouble is that appellees disregard what this Court said immediately following the language which appellees quote at page 8 of their motion. For this Court immediately said:

> "However, it has also been held that when a reviewing court finds a legal error in an administrative order, the agency is not foreclosed upon the remand of the case from enforcing the legislative policy of the act it administers, provided the new order does not conflict with the reviewing court's mandate."

It clearly appears here that the Commission literally

complied with the mandate of the court below, sans the court's fundamental error complained of by all appellants. This we have clearly demonstrated. But in any event, upon the remand this Court said that "if the reviewing court finds a legal error . . . the agency is not foreclosed from enforcing the *legislative policy*." Ibid.[5]

As in *Colgate-Palmolive*'s case, the only clear directive to the Interstate Commerce Commission was for "reexamination and study and further action not inconsistent" etc. Reiterating, this the Commission did and in so doing gave effect to the legislative policy of Section 307(a) of the Act, *49 U.S.C. 307(a)*. This the Commission was compelled as a matter of law to do.

In any event, the only error of the Commission, clearly pointed out by the court below, was lack of adequate findings to satisfy the requirements of courts even prior to the Administrative Procedure Act, *5 U.S.C. 1001, et seq.*, and now required by Congress in Section 7(b), ibid, was fully complied with.

Again, as in *Colgate-Palmolive*'s case, supra, we say as did this Court, "We find it inconceivable" that any of the appellants here "could have successfully" maintained an appeal from the decree of the court below. An appeal at that point would, in the writer's opinion, have been folly. But the situation has now completely changed.

That part of the first opinion of the court below

[5] Citing: *Securities & Exchange Commission vs. Chenery Corp.*, 332 U.S. 194, 200; *Federal Communications Commission vs. Pottsville Broadcasting Co.*, 309 U.S. 134, 145.

about affording competing carriers an opportunity to rectify the deficiencies of their service was indefinite, vague and nebulous. It was believed that it meant no more and, in view of the statute, Section 307(a), that it could mean no more than to give consideration to the adequacy and sufficiency of competitive carriers as one factor or element among all other factors to be considered in determining the ultimate issue of *present and future* public convenience and necessity.

But by the second opinion of the court below, 268 Fed.Supp. 239, it turns out to be something very different, very, very different. The second opinion resolved the vagaries and ambiguities of the first. The second opinion did more. Without warrant it entered the legislative field in the prescription of both substantive and adjective law.

The time for appeal began to run from the date of the entry of the second judgment, May 15, 1967. *Colgate-Palmolive's* case, 380 U.S. 374, 384, citing *Federal Trade Commission vs. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211.[6]

> "(B)ut this Court is never foreclosed from determining the issue for itself." *Colgate-Palmolive's* case, supra, page 379.

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[6] Cf. *Labor Board vs. Donnelly Garment Co.*, 330 U.S. 219, 227, and other cases cited in footnote 5.

The motion must be dismissed. This appellant so prays.

Respectfully submitted,

PHILLIPS & PETERS
1819 Guaranty National Bank Bldg.
Jackson, Mississippi

CHRISTOPHER & BAILEY
T. S. CHRISTOPHER
2412 Continental Life Bldg.
Fort Worth, Texas 76102

Attorneys for Appellant
Braswell Motor Freight Lines, Inc.

PROOF OF SERVICE

I, T. S. Christopher, one of the attorneys for Braswell Motor Freight Lines, Inc., an Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 28th day of November, 1967, I served copies of the foregoing jurisdictional Statement on the several parties to this action as follows:

1. On the United States, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Honorable Edwin N. Griswold, Solicitor General of the United States, Department of Justice, Washington, D. C.; to Honorable Donald F. Turner, Assistant Attorney General, Department of Justice, Washington, D. C.; and to Honorable Howard E. Shapiro and Honorable William R. Weissman, Attorneys, department of Justice, Washington, D. C. 20530.

2. On the Interstate Commerce Commission, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Honorable Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington, D. C.; and to Honorable Betty Jo Christian, Attorney, Interstate Commerce Commission, Washington, D. C.

3. On the Appellees herein, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to R. J. Reynolds III, Esq., Reynolds and Reynolds, 403 Healey Building, Atlanta, Georgia 30303; to Robert E. Joyner, Esq., Wrape & Hernley, 2111 Sterick Building, Memphis, Tennessee 38103; to

Bates Block, Esq., Hansell, Post, Brandon & Dorsey, 600 First National Bank Building, Atlanta, Georgia 30303; to Wentworth Griffin, Esq., Reeder, Griffin & Dysart, 1221 Baltimore Avenue, Kansas City, Missouri 64015; to W. D. Benson, Jr., Esq., 900 Citizens Tower, Lubbock, Texas 77001; to Ed White, Esq., 280 Union Station Building, Chicago, Illinois 60606; to William O. Turney, Esq., Turney, Major, Markham & Sherfy, 2001 Massachusetts Avenue, N.W., Washington, D. C. 20036; to John S. Fessenden, Esq., Rice, Carpenter & Carraway, 618 Perpetual Building, Washington, D. C. 20004; and to Clarence W. Vandegrift, Esq., Room 305, 1012 14th Street, N.W., Washington, D. C. 20004.

T. S. Christopher
Attorney
2412 Continental Life Bldg.
Fort Worth, Texas 76102

APPENDIX A

United States District Court
Southern District of Mississippi
Jackson, Mississippi

July 16, 1965

William Harold Cox
District Judge

Mr. Phineas Stevens
Attorney
Petroleum Building
Jackson, Mississippi

Dear Mr. Stevens:

Re: Dixie Highway Express, Inc., et al
v.
United States, et al
Civil Action No. 1273(E)

The final judgment and decree submitted to the Court has been signed today by me as the last signatory thereto.

The proposed Findings of Fact and Conclusions of Law is returned to you without any signatures affixed thereto. Such Findings and Conclusions are not necessary but it is the view of the Court that it would not be proper in this case to undertake any such detailed Findings and Conclusions since the Court did not examine the record to that extent. We only examined it to the extent necessary to support the criticism made of it and feel that our criticism was sufficiently

clear to obviate the necessity of any further Findings and Conclusions.

Yours very truly,

s/ Haroll Cox

WHC:afc
Enclosure

cc: Rubel Phillips
M. Ward Bailey
Honorable John Minor Wisdom
Honorable Griffin B. Bell